

The Challenge and the Royal Canadian Mounted Police

Report of the Independent Inquiry into the Mandate, the Structure and the Operations of the Royal Canadian Mounted Police Pay Council

A. Edward Aust

August 28, 2012

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August 28th, 2012

Ms. and Messrs.

Attached hereto, please find the Report of the Independent Inquiry into the RCMP Pay Council, which examined the mandate, the structure and the operations.

As per the Inquiry's mandate, it takes into account the culture and context of the RCMP and makes recommendations with respect to the above.

Yours sincerely,

A. Edward Aust

Executive Summary

The independent Inquiry began its work four months ago into the mandate, structure and operations of the RCMP Pay Council. This was undertaken pursuant to an agreement between the Commissioner of the RCMP and the Executive of the SRR Program, which represents the membership of the RCMP.

The Inquiry was to determine the appropriateness of the present Pay Council's purpose given the changing context and culture of the RCMP.

The 170 pages report from this Inquiry dated August 28, 2012, entitled *The Challenge and the Royal Canadian Mounted Police*, focused on the need for far greater insight and cooperation between the senior management of the RCMP and the SRR Program which represents some 25,000 members. It makes 27 recommendations that include:

- A broader mandate for the Council which, if accepted would henceforth be known as The RCMP Professional Council. The Commissioner and a representative of the SRR Program would become ex-officio members of the Council.
- The recommended mandate, in addition to providing for exchanges with respect to compensation, would now include providing for exchanges concerning all workplace goals including hiring, promotion and discipline.
- The modified Council would provide for different stages of consultations as regards the different conditions of work, some of which are under the authority of the RCMP and others under the jurisdiction of the Treasury Board.
- After the initial stages of consultation, with the representatives of the management of the RCMP, the SRR representatives would deal directly with the Treasury Board Secretariat with respect to compensation issues.
- The Council would invite representatives from the Treasury Board and from the Provinces and Territories that contract for RCMP services to participate in the deliberations concerning specific conditions of work for the membership.
- The Council would henceforth make recommendations to the Commissioner as regards the workplace goals over which he has jurisdiction.
- A new position of Vice-Chair would be created with specific responsibilities to ensure that the interests of the minorities groups within the organization, including women, have their voice heard before the Council.

The Inquiry was undertaken by A. Edward Aust, a lawyer based in Montreal, who has led numerous inquiries into both public and private organizations.

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Introduction

I. The Challenge and the Royal Canadian Mounted Police

The Royal Canadian Mounted Police (the “RCMP”) has had numerous external and internal inquiries examining its organization, culture and operations. Many have made insightful and constructive recommendations as to what should be done to improve the leadership, the culture, the training, the efficiency and the quality of the services it provides. All of these reports, as well of the results of this Inquiry, conclude that the challenges for the RCMP are substantial.

This Inquiry is focused on the Pay Council, its mandate, structure and operations. It shall refer to the collective workplace goals or issues that may require a forum and process to assist in their resolution. These have been raised either in this Inquiry or in past reports concerning the RCMP.

It is worth being reminded that organizational change is a most difficult process, even when there is cooperation between the parties. In its essence, it requires personal and collective insight from those involved. Even where there is collective insight, arriving at agreement as to a course of action, especially where there are individual or constituency interests involved, requires consistent and persistent effort.

Providing advice or ordering others to adopt new or modified collective behaviors is not likely to succeed without the support and participation, in good faith, of a critical mass of the willing.

When one reviews the numerous investigations and reports concerning the RCMP, one of the obvious issues is why so many of the recommendations have not seen the light of day.

Underlying this Inquiry and the recommendations contained in this report is the recognition that it is not only through someone alone ordering, advising or providing a step-by-step method to improve the RCMP that advances and goals can be attained.

Improvement and the attainment of workplace goals will require developing an internally generated improved vision of the type of workplace relationships by the leadership of the Force and the SRRs.

This involves the capacity to understand the dominant cultural forces and practices at play. It demands insight into the interplay and dynamics that encourage the present organizational behaviour. It calls for an ability to communicate the understanding of the reasons for change that are logical and make sense.

Followers who trust tend to accept the errors that usually occur with substantial challenges, when assumed with recognized competence for the common welfare, especially in times of crisis.

Addressing the crucial question of the RCMP management culture, Murphy and McKenna suggest:

This police perspective tends to privilege the values and qualities fashioned from police experience. While this may, in part, be a necessity for managing the uncertainty of police work at the operational level, it is clearly limited as a general senior managerial perspective for an organization that does so many different kinds of policing. The complexity of administering and managing the RCMP's expansive mandate requires more than this traditional management model can offer and, in some cases, may require values and practices that are counter to its core assumptions. In sum we believe that traditional "police" management culture is an inadequate basis for managing the current RCMP mandate and that some of its current problems can be linked to its problematic and limiting qualities.¹

It will require a greater recognition of the rise of knowledge work in policing. In order to access the knowledge embedded in the membership, it must create a structure and a work environment to encourage the sharing of information quickly allowing for the organizational flexibility and adaptability to prevent a crisis becoming disasters.²

One of these processes is for the senior management and the SRR leadership of the RCMP, on Council to demonstrate their respective capacities to set an example of their vision of the improved relationships desired.

Rebuilding the Trust, Report of the Task Force on Governance and Cultural Change in the RCMP completed on December 14, 2007, contains the following recommendation:

Recommendation 34 – Leadership Competency

The RCMP should ensure that specific and detailed competency profiles are in place for all senior leadership positions and are current and reflect modern policing responsibilities.³

Failure to develop together the common internal insights, to jointly diagnose the nature of issues and support a course of remedial action necessitates internal awareness and participation.

¹ *Id.* p. 59.

² **Tapscott, Don & Ticoll, David**, *The Naked Corporation, How the Age of Transparency Will Revolutionize Business*, Viking Canada 2001, ISBN 0-670-04398-2.

³ *Rebuilding the Trust, Report of the Task Force on Governance and Cultural Change in the RCMP* (The Brown Report), Submitted to Minister of Public Safety and President of the Treasury Board, December 14, 2007. <http://www.Tpublicsafety.gc.ca/rcmp-grc/fl/tsk-frc-rpt-eng.pdf>⁴ **Reed, Gary Edward**, *Organizational Change in the Royal Canadian Mounted Police*, Unpublished Thesis, 1982.

Tell me and I will forget; show me and I may remember; involve me and I will understand.

Chinese Proverb

Developing enlightened collective insight and perspective into improving the workplace is not for the faint of heart. Gary Edward Reed, thirty years ago in his unpublished thesis *Organizational Change in the Royal Canadian Mounted Police* Reed⁴, contended that organizational change is a process in which the organization endeavors to adapt to its environment. However, in the case of the RCMP, the institutional characteristics or social structure reduce the effect of any organizational change or so co-opt it that the change fits within the existing social structure.

The authors of these internal or external inquiries or academic papers conclude that the dynamics within the RCMP that produce the resulting behaviors and consequences are highly complex. To develop a common understanding between the Minister of Public Safety responsible for the RCMP, the Treasury Board, a central agency of the Federal government, the management of the RCMP, other stakeholders and the membership of the RCMP will necessitate collective insight. The nature of the major variables that interact to create the workplace cultural norms will have to be examined.

The variables among others might include the failure to have understood that police have increasingly become knowledge workers. This requires a greater recognition of the self-directed nature of their work and the type of structure to support it. What is the impact of the paramilitary structure of hierarchy? How do the numerous internal human resource systems such as promotion, discipline and the extensive regulations affect member's behavior?

Progress will be difficult without some level of consensus between the parties as to what combination of factors will require modification or change in order to define a course of action. The cultural factors and/or practices mentioned in the report are not intended to provide an opinion as to what series of factors are necessarily involved with any particular issue.

Individual change is usually gradual and begins with internal awareness of our self as well as our contributory role in the resulting interaction with others. Common beliefs or untested assumptions tend to reinforce one another, especially when members RCMP careers average twenty six to thirty years. A level of maturity facilitates this process.

In the classic work *Man Made Disasters*, Barry Turner explains the advantage and a disadvantage of an organizational culture sharing a common perspective:

Part of the effectiveness of organizations lies in the way in which they are able to bring together large numbers of people and imbue them for a sufficient time with the sufficient similarity of

⁴ Reed, Gary Edward, *Organizational Change in the Royal Canadian Mounted Police*, Unpublished Thesis, 1982.

approach, outlook and priorities to enable them to achieve collective, sustained responses which would be impossible if a group of unorganized individuals were to face the same problem. However, this very property also brings with it the dangers of a collective blindness to important issues, the danger that some vital factors may be left outside the bounds of organizational perception.⁵

The Inquiry was told that a degree of tension between the membership and the senior commissioned officers was normal given their authority and their power to influence one's career. However, the fact that two Commissioners have recently ended their tenure in less than favorable circumstances has shaken the faith of a number of members in senior leadership. Furthermore for at least ten years, the questionable leadership of the most senior officers had failed to set an example of the type of relationships that the organization sought in the workplace.

The combined impact of this disappointing leadership over such a prolonged period, as well as the negative media coverage of the RCMP, have left the impression that the RCMP has been unable to adapt to the evolving context and expectations of 21st-century Canada.

Several interviewees suggested there had been too little consistency of priorities under the leadership from one Commissioner to another and that the turnover in the senior leadership was too high. Consequently, exceptionally low expectations have developed over the past decade about the capacity of the organization to overcome and develop the trust required to improve the working relationships in the RCMP.

While certain work conditions such as salary, hours of work or the uniform to be worn can be legislated, trust, respect and attitudes are considerably more difficult to regulate. These human qualities tend to be reciprocal and result from healthy relationships.

One of the serious consequences has been that too many members have looked upon their relationship with the RCMP more and more as a transaction. The attempts at change, the slogans and the unfulfilled promises to implement workplace goals to better support the membership accomplishing their work have created deep cynicism. The result can be lower commitment and alienation from one's work and sense of purpose.

Building cooperation will require multiple, consistent, internally designed initiatives requiring collaboration between the management and the Staff Relations Representatives (the "SRRs"). One such initiative is the establishment of a modified process where problem-solving is worked on continuously. This would include the SRRs and management working on Council with seasoned specialists with track records at implementing workplace goals.

⁵ **Barry A. Turner** and **Nick F. Pidgeon**, *Man Made Disasters*, 2nd ed., Oxford: Butterworth-Heinemann 1997, p. 47.

The process must facilitate collaboration between SRRs and the management of the RCMP, leaving behind outdated practices, imagining and collectively developing the specific actions required in their organization.

It necessitates seeing with new eyes their own individual and collective behaviors. Most of all, they must have consensus on the direction and collective ownership of the initiative for bringing about change. This was the starting point in 1996 and 1997 for the work of the Pay Council which should be continued.

A renewed, modified Council can be one of the catalysts for encouraging internal constructive ownership of the challenges by the management of the RCMP, the SRRs and other stakeholders

Police are the most visible representatives of the authority of the state. In this role they are the face of the justice system and the gatekeepers of the criminal justice process.

The broad discretion of police to arrest or not, their skill in confronting crises calling for split-second action, their judgment whether to use lethal force when warranted by the circumstances, and the priorities they triage when faced with responding to several emergencies, may all have crucial consequences for those involved and their loved ones.

The RCMP is recognized throughout the world as a symbol of Canada and Canadian values. Initially established in 1873 as the North-West Mounted Police, the RCMP has a long history in a relatively young country.

As an institution, the “Force”, as the RCMP is also known, is an essential resource for maintaining peace, order, good government and the rule of law in Canada. With its capacity to mobilize large numbers of peace officers and its ability to respond in a paramilitary fashion if necessary, the RCMP can be critical in instances of national security threats, environmental disasters and terrorism.

With its combination of human, scientific and technological resources, its locations across Canada and in embassies abroad, the RCMP provides a vital network for public safety.

Indeed, the RCMP’s diverse and unique role in Canadian policing encompasses more than federal policing. It is a truly national force.

The RCMP has divisions largely based on provincial boundaries and contracts its services to eight provinces, three territories, some 150 municipalities, and approximately 600 aboriginal communities.

It operates and coordinates several national police services for the benefit of all Canadian police forces and some training for other national police forces, including the Canadian Police Information Centre (CPIC), Forensic Science and Identification Services (FS&IS), and the

Canadian Police College (CPC). The peacekeeping role of the RCMP has also been recognized for its contribution to improving international standards of policing.

The budget for the RCMP for the fiscal year 2011 was approximately 4 billion dollars, of which approximately 80% is paid in salary and benefits.

The work the RCMP carries out may be analogous to other types of policing carried on by other police services. Nonetheless, given its broad range of responsibilities, the vast geographic area it operates in, its institutional characteristics and culture, it is truly unique. So must be the processes and forums for its improvement.

II. The Multiple Institutional Stakeholders in the RCMP

There are numerous external and internal bodies and individuals that have interests in the integrity, competence, effectiveness and well-being of the RCMP. The people of Canada are the largest, and their fundamental rights to a free and democratic society are established in accordance with the constitutional principle known as the Rule of Law⁶.

Under this unwritten constitutional principle, the police are independent from the executive branch of government in the investigation and enforcement of the law in criminal matters. The Rule of Law requires that the law be applied equally to all citizens. This is inclusive of everyone, from the most powerful to the least fortunate person. The principle of police independence was restated in the landmark case of *R. v. Campbell*. Justice Binnie writing for a unanimous Supreme Court of Canada stated:

33 While for certain purposes the Commissioner of the RCMP reports to the Solicitor General, the Commissioner is not to be considered a servant or agent of the government while engaged in a criminal investigation. The Commissioner is not subject to political direction. Like every other police officer similarly engaged, he is answerable to the law and, no doubt, to his conscience.⁷

Canadians also rightly expect the different levels of government and agencies involved with the RCMP to cooperate and collaborate in ensuring the organization deals effectively with the issues it faces and provides the public the services it is intended to. As the undersigned has written elsewhere:

Police forces will be required to expect greater holistic thinking from their leadership and significantly more co-operative approaches between the different agencies; according to the research of the Task Force, on Service Delivery Models in Canada, Russell L. Ackoff, in the March/April edition of *Strategy and Leadership*, at page 9, points out that Canadians “would like to see their governments dealing with whole issues, not with part of issues;

⁶*R. v. Campbell*, [1999] 1 SCR 565; *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, at 240;; *Roncarelli v. Duplessis*, [1959] SCR 121, 1959 CanLII 50 (SCC).

⁷*R. v. Campbell*, *ibid.*, para. 33. [Emphasis added].

whole people, not parts of people. Typically, services to citizens are fragmented between governments and departments within governments and, as alternative service delivery options are created, between and among sectors.⁸

To appreciate the complexity of the relationships that can develop concerning RCMP workplace goals it is necessary to take note of the different external stakeholders. Often, within each of these bodies there are different individuals, departments and agencies that are accountable for limited but specific aspects of the RCMP's operations. These include:

1. The people of Canada
2. The Government of Canada
3. The Governor General, Prime Minister, Supreme Court of Canada Justices, Ministers, and Foreign Dignitaries (who may receive protective services from the RCMP)
4. The Minister of Public Safety
5. The President and members of the Treasury Board
6. Provincial Governments contracting for RCMP services (except Ontario and Quebec)
7. The three territorial governments of Canada who receive RCMP services
8. The 150 municipalities in Canada who contract for RCMP services
9. The Aboriginal Communities
10. Other institutions including those in the judicial system with which the RCMP interacts and with whom it is involved including the Crown prosecutors, judges and other police forces

In addition to the external stakeholders, there exist internal stakeholders, such as the unionized public servants who work within the RCMP, regular members of the RCMP, and the different constituencies within the membership, which are sometimes created by the particular nature of their duties and/or rank or civilian member status.

III. The Role of the RCMP Pay Council

When one considers the substantial interests of the various stakeholders, the number of individuals working in the RCMP (over 30,000 including civilian members and unionized public servants), their categories, their rank, the types of work they carry out in the organization and their diverse geographic locations, it is reasonable to expect that workplace conflicts between the membership and the management of the RCMP will emerge.

⁸ **Aust, A. Edward**, *Contributions of Women in Policing, Paper presented to Change, Challenge and Celebration*, RCMP conference, Cornwall, Ontario, October 28th, 1999, page 3.

Depending on the diagnosis of what an issue involves, it may be handled at the local or divisional level successfully. Nonetheless, certain issues may require the attention of a Force-wide perspective to be resolved. Furthermore, an issue by its nature may require involvement by several external stakeholders in addition to the SRRs and the representatives of the RCMP.

As Gareth Morgan explains:

Even the simplest situation can mean different things to different people. Though it seems simple, it is often complex. Consider, for example, a situation in which two employees are in conflict. The situation can be resolved simple enough through a unilateral action- “Will do it this way!”- but, underlying the conflict may be a variety of competing ideas, facts, and interpretations that make perfect sense to the holder but are contradictory to the rival. Effective management of such situations ultimately depends on the ability to understand many dimensions simultaneously, to provide the bases for creative rather than dogmatic responses. The importance of this skill to managerial competence is clear when we realize that the conflict just described is often found on a larger scale in interdepartmental, inter-organizational, and inter-sectoral.⁹

The role of the RCMP Pay Council (the “Council”) at present is one part of the process for determining the salary benefits and allowances that RCMP members receive.

The Council’s goal is to ensure a process that enhances a deeper understanding of the compensation issues between the parties, thereby increasing the odds that mutually acceptable solutions are arrived at. The final authority and right to decide the particular amounts and components of compensation rests with the Treasury Board.

Following meetings in 1992 and upon agreement between the Commissioner of the RCMP and the executive of the SRR, it was agreed in March of 1993, to conduct an inquiry into what type of processes should be established in order to arrive at the compensation recommendations that would be submitted to Treasury Board.

This inquiry resulted in a recommendation for the establishment of an RCMP “Employment Board” to facilitate the pay determination process. In 1996, pursuant to this recommendation, the Council was established

The present mandate of the Council is to make recommendations to the Commissioner for both active regular members and (to a more limited extent) civilian members, up to and including the rank of superintendant or equivalent. The goal is to resolve issues in a consultative manner.

⁹ **Morgan, Gareth**, *Riding the Waves of Change, Developing managerial Competencies for a Turbulent World*, Jossey-Bass Publishers 1988, ISBN 1-55542-093-1, p. 133 -134.

The present structure and roles of the Council and its members were designed taking into account that there had never been a quasi-formal forum for the discussion of pay and benefits in the RCMP. The Council has operated continuously since its inception.

Prior to the inquiries and recommendations which took place between 1993 and 1995 and which concluded in the need for the Pay Council, compensation matters were decided pursuant to the recommendations of the Commissioner to the Solicitor General (now the Minister of Public Safety and Preparedness), who in turn conveyed them to the Treasury Board. The information provided to the Commissioner was determined and compiled under the authority of the RCMP within the Compensation Branch of the RCMP.

The structure of the Council as established in 1996 provided for the Council to be chaired by an independent and neutral third party from outside the RCMP who has relevant experience in facilitating the process of mutual understanding. The RCMP was provided with two representatives appointed by the Commissioner, one who was an active officer and one who was retired. The members of the RCMP were provided with two representatives of the Divisional SSR program, one of whom was a specialist in executive compensation from outside the organization.

The design of the Council was aimed at creating an appropriate atmosphere outside of, but complimentary to, the paramilitary rank structure of the RCMP. It was to provide a forum and atmosphere different from the traditional division of power that exists between the superior and the subordinate members. It was to be conducive to fostering mutual understanding of the various perspectives, insights, and ideas of the participants on Council.

As well it was to be led by an independent Chairperson to ensure a level of constructive interaction and, through research activities, it would provide independent sources of comparative salaries, neutral fact-finding and objective information to encourage a greater understanding and reduction of conflict.

To expand the perspective of the Council, three individuals from outside the RCMP were to be included in the membership of the Council. At least one would have expertise in alternative dispute resolution, another would have expertise on executive compensation, and one retired officer would bring the perspective of someone who had had a career in the Force.

The independent Research and Support Branch of the Council (the "Branch"), with its own manager and analysts, has developed over the past 15 years the capacity to ensure that its statistics, data and information is of a quality to inform and assist the work of the members of the Council. The Branch assembles and presents such required information in an objective unbiased manner and provides administrative functions to support the Council.

The implementation of the recommendation to place the responsibility for the accumulation of substantial data in the hands of neutral, independent and unbiased analysts in the Branch significantly reduced the opportunity for skepticism, cynicism and uninformed criticism of the facts upon which were often relied upon in arriving at recommendations.

In *Rethinking Police Governance, Culture & Management*, undertaken for the Task Force on Governance and Cultural Change in the RCMP, Christopher Murphy and Paul McKenna enunciate the need for thinking outside the box when faced with organizational challenges:

However, we believe, based on the evidence that we have reviewed, that if the RCMP is to flourish in the future and continue not only as an historical symbol but also as a symbol of modern policing excellence, it will have to find new and better ways to manage its varied and challenging activities and responsibilities. This will require developing a police service that places more emphasis on thinking outside the conventional police management box, is more open to outside research-based learning and experience, is capable of attracting the best and the brightest managers and specialists from inside and outside the organization, and has an organizational culture with eclectic values that privileges education, experience and managerial excellence. Given the many serious challenges facing the RCMP now and in the future, we believe that nothing less will do.¹⁰

The Council has been a concrete example that when provided a collegial forum, with an appropriate emphasis on learning that the behavior required for the institutional purpose does emerge. Improvements to the Council are required but its foundations are worthy.

iv. The Changing Dynamics and Evolving Context

The downturn in the economy of the Western world since 2008 and, more recently, the slowing of economic growth globally are important considerations when arriving at expectations regarding compensation for the public sector.

Recently, the *Commission on the Reform of Ontario's Public Services Report*, 2012, Public Service for Ontarians: A Path to Sustainability and Excellence¹¹, explained that policing was one of the fastest-growing areas of public expenditures in Canada.

It suggested that a range of alternative models of service delivery would have to be explored in order to provide for improved fiscal sustainability. The alternatives it recommended should be examined included using peace officers for core duties only, increasing use of private security

¹⁰ Murphy, Christopher & McKenna, Paul, *Rethinking Police Governance, Culture & Management*, Draft Final: December 3, 2007, chapter 4, Towards a New Paradigm of Police Management & Culture, p. 68.

¹¹ Chapter 14: Justice Sector <http://www.fin.gov.on.ca/en/reformcommission/>

and expanding the role of special constables in certain circumstances, and determining the relative costs and respective advantages of different ways of delivering services.

Since the recommendations to establish the Council were made in 1995, the legal framework surrounding the RCMP membership has evolved substantially regarding the members' rights to collective representation concerning their workplace goals.

Several decisions by the Supreme Court of Canada¹² have interpreted the meaning of "association" under section 2(d) of the *Canadian Charter of Rights and Freedoms* (the "Charter").¹³ The consequences of these decisions are significant for the work of and the possibilities for the Council. These legal implications alone allow for changes to the mandate, structure and operations of the Council.

Also to be considered are the legislative framework and the case law concerning the RCMP. The interest shown by Parliament and the courts for the regulation of the RCMP has been extensive¹⁴.

In *Meredith v. Canada (Attorney General)*¹⁵, Justice Heneghan's judgment of June 21, 2011 held that a unilateral Treasury Board decision to roll back certain salary increases made it impossible for the Pay Council to represent the members of the RCMP and to have any consultations be considered in good faith. The Court held that the Pay Council process had been effectively disregarded before the Treasury Board's decision. As such, the Federal Court concluded that the Treasury Board's decision of December 11, 2008, violated the applicant's rights under section 2(d) of the Charter. The application for judicial review was granted and the Treasury Board's decision of December 11, 2008 was quashed.

The Treasury Board's rollback of salary increases has shaken the faith of many RCMP members in the process, usefulness, validity, and work of the Council. Their belief in the goodwill of the government of Canada, acting through its central agency, the Treasury Board, in establishing the salary and benefits in the RCMP has been significantly undermined.

When the significantly more powerful party to a relationship exercises its prerogative in a manner failing to respect what it had agreed to, an unfavourable reaction by the other party is understandable.

¹² *Delisle v. Canada (Deputy Attorney General)*, [1999] 2 SCR 989 ; *Dunmore v. Ontario (Attorney General)*, [2001] 3 SCR 1016;; *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 SCR 391, *Ontario (Attorney General) v. Fraser*, [2011] 2 SCR 3.

¹³ *Constitution Act, 1982* - Part I, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.<http://www.canlii.org/en/ca/laws/stat/schedule-b-to-the-canada-act-1982-uk-1982-c-11/latest/schedule-b-to-the-canada-act-1982-uk-1982-c-11.html>, see also: <http://canlii.ca/t/8q7l>

¹⁴ **Nadeau, Alain-Robert**, *Federal Police Law 2010, Annotated Royal Canadian Mounted Police Act and Regulations, 1988 and Other Regulatory Instruments*, les Editions Yvon Blais 2010, ISBN 978-2-89635-304-0.

¹⁵ *Meredith v. Canada (Attorney General)* 2011, [2011] F.C.J. No. 948. The Federal Court of Appeal has heard the appeal but not yet rendered its decision.

In any endeavor involving more than one person is the nature and characteristics of their relationship. At the heart is the division of power and the manner in which the more powerful party exercises its discretion.

Whether it is the family or any other institution, the contribution and benefits of each party can vary infinitely. They can be intrinsic or extrinsic. They may include cultural expectations, a sense of morality, the respective knowledge and competence of the parties, their intuition and judgment, the relative power between them, or the resources each party has.

Organizations with rigid, unchallenged assumptions and beliefs, generally display greater difficulty in adapting to the changing expectations of those they serve. These are not necessarily always negative attributes. On the contrary, values such as integrity, respect and fairness in relations may not require any modification. A native Albertan and professor Emeritus at Stanford University, Albert Bandura points out in *Self-Efficacy Changing Societies*:

Effective action for social change requires merging diverse self-interests in support of common core values and goals. Disagreements amongst different constituencies create additional obstacles to successful collective actions. Leadership increasingly faces the challenge of governing over diversity in ways that permit both autonomy for constituent communities to direct their own lives and unity through shared values and purposes. The voices for parochial interests are typically much stronger than those for collective responsibility. It requires efficacious inspiring leadership to forge unity within diversity. The recent years have witnessed growing social fragmentation of societies into special interest groups, each exercising its own fractional power. Pluralism is taking the form of antagonistic fractionalism. As a result, it is easier to get people to block courses of action than to merge them into a unified force for social change.¹⁶

¹⁶ **Bandura, Albert (editor),** *Self-Efficacy Changing Societies*, Cambridge University Press 1995, ISBN 0-521-47467-1, p. 37. [Emphasis added].

v. A Contemporary Mandate for the Council

The real voyage of discovery consists not in seeking new landscapes but in having new eyes. Marcel Proust

This Inquiry has listened to the perspectives of members of all ranks and reviewed numerous reports concerning issues facing the RCMP.

Providing a viable, practical forum for exchanging views regarding collective workplace goals requires seeing beyond an abstract model of a dispute resolution forum or a model that may be suitable in another situation.

A traditional flaw in the reasoning of planning is the expectation that the plans, the structures recommended and the processes established will be implemented as designed.

This is often based on the naïve assumption that the categories of individuals, their professional designation or their hypothesized behaviour will play out in a preconceived fashion and along predictable lines, in accordance with the plan and the planner's intentions.

Although attractive, a concept or plan usually does not begin to take into account the unique human qualities of each individual member's nature, aspirations, personality and frailties. Hence, the application of each of these abstract concepts rarely, if ever, attains their intended aims and more than likely have unintended consequences.

In the RCMP, the planned models of relationships (paramilitary), the structure of work processes (bureaucratic), the type of knowledge deemed necessary to successfully undertake the work and the expectations of what must be learned to render the organization capable of adapting, have all been applied or evolved as norms over time. Recruits often accept them without question while longer serving members have adopted the habits.

When we consider each of the systems or plans mentioned above that contribute to behaviors in the RCMP that are super-imposed on the thousands of individuals and their relationships as a whole, we can begin to understand why organizational change can be complicated.

The combined and often unpredictable impact of all the systems on the behaviors in the workplace, the types of conflicts that arise and the chances of encouraging the behaviors necessary for the RCMP's services to be appreciated by the public it serve, takes on a further level of complexity.

[t]his formulation by university of California, Santa Barbara, biologist Garrett Hardin applies to any action that changes something in a complex system... Even when an action is successful in achieving its intended result, it also has outcomes that were not intended, and these may offset or

outweigh that intended result.¹⁷

Internal observation and reaction to the evolving circumstances should lead to organizational change, rather than relying on external perceptions of the RCMP. These issues will be dealt with in the part of the Report entitled “Mandate”. To develop a deeper internal understanding of the elements which affect workplace behavior by the leadership and the SRR representatives in the RCMP necessitates a critical examination of the collective beliefs, experiences, attitudes and values of the membership with a microscope.

Based on the findings of this Inquiry, the creation of an entirely new model for the Council, at this particular conjecture in the workplace relationships in the RCMP, is not advisable. The Inquiry has concluded that it is preferable to modify the existing model of the Council through expanding its mandate, given its proven reliability and its overall contribution.

This recommendation calling for a modified mandate for the Council follows significant developments, both within the RCMP and the context in which the Council operates. These changes are necessary in order for the Council to continue to be and to become even more effective. They will be expanded upon further in this report, with due consideration for the workplace issues that have been raised in recent reports or in this Inquiry with respect to the culture and context of the RCMP.

The legal clarification by the Supreme Court of Canada as concerns the rights and derivative rights of association in virtue of section 2(d) of the Charter now provides a legal framework for consultation by the SRRs, in good faith, regarding workplace issues. As will be elaborated upon further in this Report, this would include such consultation with the RCMP and with Treasury Board in respect to the work conditions under their respective authority.

It may be useful conceptually to think of the Council as a back-up system that provides a safety net for those issues which are not handled by the traditional structure of the RCMP and avoid dealing with them in another forum outside of the organization.

As Pauchant and Mitroff underline in *The Crisis Prone Organization*, there is a necessity for organizations to challenge their own beliefs so as to guard against poor decisions. As will be discussed later in the section on Mandate for the Council, the ability of groups of officers to speak frankly with a superior with strong beliefs who can influence their future career aspirations has not been well established or taken for granted in the RCMP. The process of discussing workplace issues can play an important role in avoiding crises according to author Denis Smith:

Organizations need to constantly challenge their core assumptions and beliefs concerning the nature of their activities and the potential crises they face. Ultimately, the solutions and causes of crisis

¹⁷ **Peter, Laurence J.**, *Peter's People and their Marvelous Ideas*, William Morrow and Company, Inc. 1979, ISBN 0-688-03488-8.

incubation are tightly linked and embedded in the psychological and emotional characteristic of the organization. A constant challenge to these factors is perhaps the only way to move beyond contingency planning toward developing a more open culture for dealing with crises.¹⁸

It can provide a useful oasis and intersection by providing an independently and neutrally chaired forum, for different stakeholders to meet share and collaborate in seeking constructive solutions to their respective workplace goal and issues.

While different stakeholders may exchange information about workplace issues between their representatives, these issues may require being discussed in an integrated fashion. We believe that the Council can provide a forum for such integrated discussions.

The modifications to the mandate of the Council that this Inquiry recommends would include several steps or stages. They would include a consultation process between the representatives of the RCMP, the Treasury Board Secretariat and the SRRs. In this first stage, this would include exchanges concerning all workplace goals. As regards compensation, a stakeholder such as the representatives of the provinces and territories would be invited to join and exchange views on the subject.

This would include pursuant to this the preparation of recommendations for the Commissioner with respect to the workplace terms and conditions over which he has authority by the management of the RCMP and the SRR representatives.

This having taken place, the SRRs would enter into exchanges directly with Treasury Board representatives with respect to their collective workplace goals regarding work conditions under the jurisdiction of the Treasury Board. This would include exchanges on the subjects of salary, benefits and allowances with the Secretariat of the Treasury Board. This proposal fits clearly within the legal parameters of the SRRs' right to pursue the collective goals of the membership as interpreted by the Supreme Court of Canada¹⁹.

The Council's mandate and structure would include provisions for the intermittent representation, at appropriate times, from other stakeholders, such as the provinces and territories who participate in the contract management committee and Treasury Board representatives.

As called for in the objectives of this Inquiry, the culture and context have been taken into account several of the principle workplace issues that have been raised in the chapter "Mandate".

¹⁸ **Smith, Denis**, *Vicious Circles, Incubating the Potential for Organizational Failure, Risk Management*, Volume 46, n. 10, pages s 7-s 11, October 1999.

¹⁹ *Ontario (Attorney General) v. Fraser*, [2011] 2 SCR 3.

IV. Mandate , Objectives and Duties of this Independent Inquiry

In May 2012, RCMP Commissioner Bob Paulson and the National Executive of the SRR, Abe Townsend and Mike Casault mutually agreed to an independent inquiry to conduct a review and evaluate the mandate, structure and operations of the Council. The parties agreed to the appointment of the undersigned to undertake this mandate.

The Commissioner and the National Executive of the SRR Program agreed to an independent inquiry, review and evaluation of the current structure of the Council, including, but not limited to, the following components:

- Structure
- Operations
- Quality of results
- Role of the primary participants

The Inquiry must take into account the RCMP's:

- Goals
- Culture
- Context

The report is to include:

- Methodology
- Sources of information

The report's analysis and recommendations will take into consideration:

- Current developments in labour law, specifically those relating to RCMP members
- The level of resources required to sufficiently support the framework
- The labour relations landscape

This report shall clarify the roles, relationships and responsibilities regarding all stakeholders, including:

- The Commissioner and Senior management of the RCMP
- Staff relations Representative Program of the RCMP
- Other sections of the RCMP, eg: national Compensation Services
- Treasury Board
- Public Safety
- Provinces and Territories (through Contract and Aboriginal policing Services)

This Inquiry is designed to:

- Undertake the study and analysis of the process within Treasury Board and the RCMP for handling compensation and other benefit issues, including a review of the current process (the Council)
- Ensure the study will include recommendations on pay determination for all ranks and levels of members of the RCMP
- Deliver a report to:
 - The Commissioner of the RCMP
 - The National Executive of the SRR
 - The Manager, Pay Research and Support Services

by 120 days from the start date, August 31 2012 outlining the recommended framework for the future state of pay determination in the RCMP.

1. The Mandate of the Council

If real success is to attend the effort to bring a person to a definite position, one must first of all take pains to find him where he is and begin there. This is the secret of helping others...in order to help another effectively, I must understand what he understands. If I do not know that, my greater understanding will be of no help to him...Instruction begins when you put yourself in his place so that you may understand what he understands and in the way he understands it.²⁰

1.1 The Present Mandate

1.1.1 The Pay Council

In September 1992, Staff Sergeant Kevin A. MacDougall, Chair of the Pay Committee of the Staff Relations Program, initiated consultations with the goal of undertaking an independent review of the type of process that would be appropriate to establish pay and benefits in the RCMP. Little did he know how far reaching and consequential his initiative would be in determining the validity and future of the SRR Program.

The mandate of the Pay Council was born from the recognition that there was a need for a process involving a more formal forum designed to promote and encourage the SRRs and the management of the RCMP to exchange views in a constructive manner regarding salary, benefits and allowances.

Under the process agreed to, the Pay Council would develop recommendations which would then be provided to the Commissioner. The Commissioner, after considering the Pay Council's recommendations, would forward them (with his comments if required) to the Minister of Public Safety and Emergency Preparedness, to whom the Commissioner is responsible for the administration of the RCMP. The Minister of Public Safety and Emergency Preparedness would then advise Treasury Board of the recommendations.

The original mandate of the Pay Council has now existed for the past fifteen years and this Inquiry has learned that it "overall" has played an important and constructive role.

²⁰ **Kegan, Robert**, *In Over Our Heads, The Mental Demands of Modern Life*, Harvard University Press 1994, ISBN 0-674-44587-2, p. 278.

Members of the Pay Council generally agreed that they developed their problem-solving abilities and that exchanges were substantially facilitated by the presence of the neutral Chair and the Pay Council's Research and Support Services Branch's capacity to undertake and provide the Council's members with neutral fact-finding and unbiased research.

Both the Ontario Court of Appeal²¹ and the Federal Court of Canada²² relied in part on the existence of the Pay Council in concluding, in the context of the issues raised in those cases, that the SRR Program contributed to the collective representation afforded by the right to association under Section 2(d) of the Charter.

It was clear during the inquiry that the RCMP members favor direct consultations between their representatives and the party who actually has the authority to deal with such matters, the Treasury Board through its Secretariat. The members interviewed expressed frustration with the concept of making recommendations to the Commissioner, who makes recommendations to the Minister of Public Safety, who passes along the recommendations to the Secretariat of the Treasury Board, who represent the Treasury Board. This finding is also confirmed in the Conclusions-Recommendations of the 2010 survey carried out for the SRR Program:

- Support for the SRRP is very high, within the context of change. A solid preference of a modified Staff Relations Representative System holds true across regions, rank, and tenure, and it speaks to a need for change within the employee representative system. It also indicates that a modified SRRP is in a very good position to meet the needs of the membership, but it is contingent on a successful execution of several elements, including:

A strategy to address expectations of the membership identified in this study, particularly the independence of management and authority to negotiate on behalf of members, especially with relation to pay/pay levels/benefits.²³

In order to understand the discussion of the mandate of the Council, it is helpful to compare the traditional form of employment relations and the division of authority over the terms and conditions of work in the RCMP which is part of the federal public sector.

²¹ *Mounted Police Association of Ontario v. Canada*, 2012 ONCA 363 (CanLII), Doherty, Rosenberg and Juriansz

²² *Meredith v. Canada (Attorney General)* 2011, ([2011] F.C.J. No. 948, 240 C.R.R. (2d) 204, Docket T-50-09). This decision has been appealed to the Federal Court of Appeal who has heard the matter but not yet rendered its judgment.

²³ The Staff Relations Representative Program (SRRP), Satisfaction and Needs Study, Report of Findings, March 17th to April 6th, 2010, Prepared for: Staff Relations Representative Program (SRRP) of The Royal Canadian Mounted Police Prepared by: Pollara Inc., p. 8.

1.1.2 Traditional Employment

When most Canadians think of the employer-employee relationship, they think of an individual agreeing to perform work loyally for an employer. The employee is subordinate and accomplishes his or her duties under the direction of the employer. The employee is to be distinguished from an entrepreneur, who is independent and is obliged to deliver the service or finished product as agreed to.

The employer must provide the type of work agreed to, salary, benefits and a safe work environment. In the case of an employer which is a corporation, the Chief Executive reports to the Board of Directors. These contractual obligations find their roots in the common law or civil law of Quebec regarding contracts²⁴.

The employer's role encompasses and includes: interviewing and hiring candidates, obtaining agreement as to salary and benefits and promoting, disciplining and discharging employees. In the case of a corporation, the chief executive is appointed and held responsible to the board of directors of the company. These contractual obligations are supplemented with related statutory obligations including minimum standards, human rights, health and safety and workman's compensation legislation.

Should one of the parties unilaterally fail to accomplish its obligations towards the other under the employment contract, or breach its obligations in a material or significant manner, then the other party has the right to bring the matter before the courts and claim damages.

1.1.3 Jurisdiction over Terms and Conditions of Work in the RCMP

The terms and conditions of work for RCMP members, however, fall under the jurisdiction of the Treasury Board for some work conditions and under the jurisdiction of the RCMP, through the Commissioner, for others. The first step, then, is to determine, according to legislation, who has the statutory authority for a particular work condition.

At present, the Council's mandate only provides for making recommendations to be forwarded to the Commissioner regarding the work conditions that are under the jurisdiction of the Treasury Board. The Council does not have, as part of its mandate, to make recommendations to the Commissioner with respect to all the work conditions which are under the jurisdiction of the RCMP such as hiring, training, discipline and assignment of duties.

²⁴*Pointe-Claire (Ville) c. Québec (Tribunal du travail)*, [1997] 1 R.C.S. 1015.

The employment contract as understood in the private sector does not exist in the case of the federal public sector. Rather, RCMP members are considered under certain statutes, for the purposes of that particular statute, to be public servants.

Unlike many other public servants, however, the RCMP members are excluded from the application of the *Public Service Labour Relations Act*²⁵. As such do not have the right to be unionized as do many other federal public servants or as provided for under most labour legislation in Canada for private sector workers.

²⁵ S.C. 2003, c. 22, s. 2. The definition of “employee” in section 2(1) does not include a member of the RCMP.

1.2 Context

1.2.1 Economic Developments

The Western world is being increasingly challenged by a slowing economy, high government debt and insufficient revenues. In Canada, federal, provincial, territorial and municipal government spending, including the cost of policing, is receiving specific attention²⁶.

1.2.1.1 Resources

One of the challenges that police face is the availability of the necessary human and financial resources required to carry out their enforcement duties. The RCMP is presently undertaking substantial cost-cutting measures which are to continue over each of the next several years. The cost and complexity of bringing a case before the courts is increasing. In the field of white-collar crime, given its increasingly borderless nature, this is especially true. The resources that both legitimate and illegitimate organizations have at their disposal, including highly competent, sophisticated accountants and lawyers, can substantially increase the cost of investigations and bringing a case to trial. These cases take longer and demand greater levels of preparation and expertise in subjects such as technology, accounting, international banking, law and finance.

The magnitude of the power and resources of many corporations is not to be underestimated²⁷. Some global multinational corporations continue to have revenue far exceeding the GDP of many nations. The capacity for competent public monitoring by police of such organizations is openly being questioned.

	Revenue (in billions)	Number of employees
1. Wal-Mart	421,849,000	2,100,000
2. Royal Dutch Shell	378,152,000	97,000
3. Exxon Mobil	354,674,000	103,700
4. BP	308,928,000	79,700
5. Sinopec Group	273,421,900	640,535
6. China National Petroleum	240,192,400	1,674,541
7. State Grid (China Power)	226,294,000	1,564,000
8. Toyota Motor	221,760,200	317,716
9. Japan Post Holdings	203,958,199	233,000

²⁶ The *Commission on the Reform of Ontario's Public Services Report, 2012, Public Service for Ontarians: A Path to Sustainability and Excellence*, in Chapter 14: the Justice Sector, *Review of Core Responsibilities for Police*. [Emphasis added].

²⁷ **Korten, David C.**, *When Corporations Rule the World, Second Edition*, Berrett-Koehler Publishers, Inc., 2001, ISBN 1-887208-04-6.

10. Chevron

196,337,000

62,196²⁸

High-end private investigators with substantial human resources and technology are increasingly retained for major investigations by wealthier individuals and corporations. Often, they are former senior police officers with years of valuable experience who are only too aware of the restrictions of public policing. They are developing their younger talent without the limitations of bureaucracy. It is available to others at a price.

There was skepticism among the managers interviewed as to the capacity of the RCMP to recruit, train and maintain sufficient numbers of members to undertake complex white-collar criminal investigations, some of which may last several years. Such investigations often require unrelenting, arduous dedication, grueling tenacity, extreme discipline and intellectual rigor.

Borderless criminal organizations can move faster and more strategically than many police forces. Often due to the multi-national nature of crime, members need to have greater understanding of other cultures, languages and foreign laws. These developments increasingly require that members have developed disciplined study habits and a substantial ability to absorb new material.

In his exhaustive study, *The Collapse of Complex Societies*, Joseph Tainter examines the issue of when the apparatus of public organizations becomes too costly:

Socio-political organizations constantly encounter problems that require increased investment merely to preserve the status quo. This investment comes in such forms as increasing size of bureaucracies, increasing specialization of bureaucracies, cumulative organizational solutions, increasing costs of legitimizing activities, and increasing costs of internal control...All of these must be borne by levying greater costs on the support population, often to no increased advantage.²⁹

In *Making Policing More Affordable, Managing Costs and Measuring Value in Policing*, George Gascón and Todd Foglesong state:

The central question for police leadership then should not be whether major changes will occur, but rather whether those changes will be prompted thoughtfully by police professionals or forced on the profession by external forces and driven by agendas less concerned with public safety and professional development. The former can lead to a professional renaissance where new, invigorating business models are developed, leading to major improvements in public safety... In the search for more effective models for delivering police services, one might consider how other professions have dealt with the pressures to lower costs and enhance services. In medicine, for instance, a combination of newly created paraprofessionals (physician assistants), and a focus on

²⁸<http://money.cnn.com/magazines/fortune/global500/2011/snapshots/385.html>

²⁹ **Tainter, Joseph A.**, *The Collapse of Complex Societies, New Studies in Archeology*, Cambridge University Press 1988, ISBN 978-0-521-38673-9, p. 195.

prevention and wellness have been added to the arsenal of conventional medicine that is now keeping populations healthier and increasing longevity. In the legal profession, reducing liability by managing risk has become the norm. Increasingly, private and government entities under the direction of attorneys and paraprofessional risk managers create mechanisms to modify behavior or redesign products to avoid liability. These efforts reduce organizational exposure to lawsuits and protect the general well-being.³⁰

For the leadership and representatives of the membership of the RCMP to find constructive, innovative solutions to these challenges and develop a deeper level of meaningful collaboration would be an advantage. The concept of maintaining the traditional approach or business as usual, appears unlikely to be in the interests of those the RCMP serves, as well as the members.

1.2.1.2 Alternative Approaches

Having attended a recent Conference during the Inquiry, on the subject of the Economics of Policing it was striking to see the number of federal, provincial and municipal elected officials, senior police officers and services boards that are seriously reviewing how to make policing more cost effective³¹.

The Commission on the Reform of Ontario's Public Services Report, 2012, Public Service for Ontarians: A Path to Sustainability and Excellence,

The Commission on the Reform of Ontario's Public Services Report, 2012, Recommendation 14-4:

Review the core responsibilities of police to eliminate their use for non-core duties. This review would include an examination of alternative models of police service delivery. Criteria for the review would include determining the relative costs of the various security providers and an evaluation of their respective comparative advantages.

Many factors have contributed to the rising cost of policing, including technology and increasing labour costs; the changing nature/complexity of crime and the complexity of the criminal justice system; and federal legislative changes. At the same time, public expectations, demographic change and environmental factors influence policing. Policing is an essential service for the maintenance of

³⁰ **George Gascón and Todd Foglesong**, National Institute of Justice, *Making Policing More Affordable , Managing Costs and Measuring Value in Policing New Perspectives in Policing*, December 2010, Harvard Kennedy School, Program in Criminal Justice, Policy and Management, National Institute of Justice, Office of Justice Programs, *New Perspectives in Policing* December 2010, Executive Session on Policing and Public Safety, pp. 13, 16.

³¹ *Executive Symposium on The Economics of Policing: Ensuring a Sustainable Future II*, June 28 & 29, 2012, The Canadian Police College, Ottawa, Canada.

public safety and is also one of the fastest-growing areas of public expenditures in Canada. Stakeholders such as the Ontario Association of Chiefs of Police, Ontario Association of Police Services Boards and municipalities have voiced concerns over rising policing costs and the risk that this poses to the provision of police services in the future.

The Commission recommends that the province review and define the core responsibilities for policing services to eliminate use of police officers for non-core policing duties. Instead, alternative models of service delivery can be used that would result in improved fiscal sustainability for police services throughout Ontario. Alternative models of police service delivery could include increasing use of private security and expanding the role of special constables, in circumstances deemed appropriate. The review should examine a range of alternative models of police service delivery, determine the relative costs of the various security providers for service delivery and evaluate their respective advantages.³²

The members and the SRR's have valuable knowledge and information concerning the costs of policing and could play a key role in developing alternative and improved means for the delivery of police services.

1.2.2 Legal Developments

The time mutually agreed upon by the Commissioner of the RCMP and the Executive of the SRR's for this Inquiry concerning the mandate of the Council has provided an opportunity to improve their relations.

In a series of cases, the last being in 2011, the Supreme Court of Canada has now interpreted the meaning of the right of "association" with respect to section 2(d) of the Charter and its derivative rights.³³

Section 2(d) reads as follows:

2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

³² The *Commission on the Reform of Ontario's Public Services Report, 2012, Public Service for Ontarians: A Path to Sustainability and Excellence*, in Chapter 14: the Justice Sector, states in the *Review of Core Responsibilities for Police*.

³³ *Dunmore v. Ontario (Attorney General)*, 1997 CanLII 12214 (ON SC); *Delisle v. Canada (Deputy Attorney General)*, [1999] 2 SCR 989; *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27, [2007] 2 SCR 391; *Ontario (Attorney General) v. Fraser*, 2011 SCC 20 [2011] 2 SCR 3.

- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

The Supreme Court of Canada in *Ontario (Attorney General) v. Fraser*, with Chief Justice Beverly McLachlin and Justice Louis LeBel writing for the majority, stated:

[32] After *Dunmore*, there could be no doubt that the right to associate to achieve workplace goals in a meaningful and substantive sense is protected by the guarantee of freedom of association, and that this right extends to realization of collective, as distinct from individual, goals. Nor could there be any doubt that legislation (or the absence of a legislative framework) that makes achievement of this collective goal substantially impossible, constitutes a limit on the exercise of freedom of association. Finally, there could be no doubt that the guarantee must be interpreted generously and purposively, in accordance with Canadian values and Canada's international commitments.

...

[38] The decision in *Health Services* follows directly from the principles enunciated in *Dunmore*. Section 2(d), interpreted purposively and in light of Canada's values and commitments, protects associational collective activity in furtherance of workplace goals. The right is not merely a paper right, but a right to a process that permits meaningful pursuit of those goals. The claimants had a right to pursue workplace goals and collective bargaining activities related to those goals. The government employer passed legislation and took actions that rendered the meaningful pursuit of these goals impossible and effectively nullified the right to associate of its employees. This constituted a limit on the exercise of s. 2(d), and was thus unconstitutional unless justified under s. 1 of the Charter.

...

[40] The majority of the Court in *Health Services* affirmed that bargaining activities protected by s. 2(d) in the labour relations context include good faith bargaining on important workplace issues (para. 94; see also paras. 93, 130 and 135). This is not limited to a mere right to make representations to one's employer, but requires the employer to engage in a process of consideration and discussion to have them considered by the employer. In this sense, collective bargaining is protected by s. 2(d). The majority stated:

Thus the employees' right to collective bargaining imposes corresponding duties on the employer. It requires both employer and employees to meet and to bargain in good faith, in the pursuit of a common goal of peaceful and productive accommodation. [para. 90]

[41] By way of elaboration on what constitutes good faith negotiation, the majority of the Court stated:

- Section 2(d) requires the parties to meet and engage in meaningful dialogue. They must avoid unnecessary delays and make a reasonable effort to arrive at an acceptable contract (paras. 98, 100-101);
- Section 2(d) does not impose a particular process. Different situations may demand different processes and timelines (para. 107);

- Section 2(d) does not require the parties to conclude an agreement or accept any particular terms and does not guarantee a legislated dispute resolution mechanism in the case of an impasse (paras. 102-3);
- Section 2(d) protects only “the right . . . to a general process of collective bargaining, not to a particular model of labour relations, nor to a specific bargaining method” (para. 91).

...

[46] ... the logic of *Dunmore* and *Health Services* is at odds with the view that s. 2(d) protects a particular kind of collective bargaining. As discussed earlier, what s. 2(d) protects is *the right to associate to achieve collective goals*. Laws or government action that make it impossible to achieve collective goals *have the effect* of limiting freedom of association, by making it pointless. It is in this derivative sense that s. 2(d) protects a right to collective bargaining: see *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 (CanLII), 2010 SCC 23, [2010] 1 S.C.R. 815 (“*CLA*”), where the right to access government information was held to be “a derivative right which may arise where it is a necessary precondition of meaningful expression on the functioning of government” (para. 30). However, no particular type of bargaining is protected. In every case, the question is whether the impugned law or state action has the effect of making it impossible to act collectively to achieve workplace goals.³⁴

As a result, the representatives of the RCMP members have a right to pursue collective workplace goals and consult on the respective issues over which the Treasury Board and/or the RCMP have jurisdiction.

In the case of *Meredith v. Canada (Attorney General)*, the SRR invoked the protection afforded by section 2(d) of the Charter. The applicants sought judicial review of a decision made by the Treasury Board in December, 2008. They claimed that this decision, together with certain provisions of the *Expenditure Restraint Act*,³⁵ amounted to a breach of their rights to freedom of association pursuant to subsection 2(d) of the Charter. The court held that the test applied in *Fraser* could be applied to this case: did “the *ERA* and the decision of the Treasury Board make it effectively impossible for the Pay Council to make representations on behalf of the RCMP members, and have those representations considered in good faith?”³⁶

The court answered its own question as follows:

86 In my opinion, this limited engagement [on the part of the Treasury Board to only discuss certain aspects of RCMP remuneration with the SRRs] demonstrates that the Treasury Board withdrew the issue from consideration and refused to negotiate on a good faith basis. The unilateral

³⁴ *Ontario (Attorney General) v. Fraser*, [2009] S.C.C.A. No. 9, and referred to in *Meredith v. Canada (Attorney General)* 2011, [2011] F.C.J. No. 948, which was a decision of the Trial Division of the Federal Court and the appeal from this decision recently was heard by the Federal Court of Appeal (the decision has not yet been rendered). The Ontario Court of Appeal in *Mounted Police Association of Ontario v. Canada*, 2012 ONCA 363 (CanLII) decided that s.2(d) of the Charter was not violated by the SSR system of representation.

³⁵ S.C. 2009, c. 2, s. 393 (the “*ERA*”),

³⁶ *Meredith v. Canada (Attorney General)* 2011, [2011] F.C.J. No. 948. Justice Heneghan of the Trial Division of the Federal Court. This case is in appeal before Appeal Division of the Federal Court of Canada. However, due to the untimely death of one of the justices who heard this case in the Federal Court of Appeal, the arguments are to be re-heard by the Court.

cancellation of a previous agreement also constitutes interference with subsection 2(d) rights; see *Confederation des syndicats nationaux v. Quebec*.

...

91 Much of the Pay Council's work involves making recommendations for the salaries of the RCMP members. The establishment of a low wage increase for a three year period is a clear indication that the matter has been removed from discussion and consultation. This virtually eliminates the Pay Council process, with respect to establishing wages, for three years.

92 The Treasury Board's decision and the ERA made it effectively impossible for the Pay Council to make representations on behalf of the RCMP members, and have those representations considered in good faith. In my opinion, this is a substantial interference, which constitutes a violation of subsection 2(d) of the Charter.³⁷

Hence, the obligation to consult in good faith has been tested and applied in the context of the jurisdiction of the Treasury Board. The legal parameters for the processes to be followed in order to respect the constitutional protection of the right of association have now been clarified.

1.2.3 Social Developments

Amongst the expressions of changing values and expectations of RCMP members heard by this Inquiry, the voice of the younger generation of RCMP members was clearest.

As a retired member of the Force explained, the RCMP had traditionally attracted individuals with farming or working class backgrounds and a high school education. Many of the applicants were chosen because of their abilities, integrity and character. While they did not have the academic credentials necessary for the traditional professions of law, medicine, engineering and accounting, they did aspire to a more professional career and improved social status.

They saw the RCMP as a vehicle for social mobility. There was a great deal of pride in becoming a member of the RCMP. Often, members saw their improved financial and social situation as providing their children with a better life and the potential for obtaining a higher level of education which had not been available to themselves.

Most of those who considered applying to the Force were young and unattached. They accepted without much consideration to be transferred to any location where the RCMP had operations after graduation from the RCMP Academy in Regina (the "Depot").

³⁷ *Id.*

Prior to the early to mid-1960s, the salaries were comparatively modest and the hours were long. Nonetheless, many saw it as preferable to farming, working in the manufacturing sector or construction. The older generation was attracted by the security of a regular pay check. Their parents had been exposed to the Great Depression and a steady job held intrinsic value.

As governments realized that it would be difficult to ensure police integrity unless salaries and benefits provided a decent living standard and unless unionization was permitted in certain circumstances, compensation of police improved rapidly in the 1970s and the 1980s. One only has to consider the level of police corruption today in those nations who do not pay their police adequately.

However, the unionization of police services and the power struggles that resulted brought substantial attention to specific internal issues, such as increasing salary and benefits for police.

This preoccupation has to some extent had the effect of reducing the attention paid to examining and enhancing job satisfaction and intrinsic rewards, according to some interviewees particularly on the frontline. The younger generation of members is seeking, in addition to salary and benefits, more intrinsic rewards from improved job design, learning and personal development.

As the authors Batts, Smoot and Scrivner explain in *New Perspectives in Policing*, contemporary, younger police officers present new challenges and opportunities to police leaders and representatives of police associations.

Modern police leadership continues to evolve and is introducing new business models that address some of the issues important to a workforce impacted by the contemporary employee cohort and their emphasis on using technology in unprecedented ways. Many police leaders recognize that balancing complex demands is but one role of the modern leader and that multilayered bureaucratic police departments will have to learn to keep pace with information and data that move at the speed of light and with the new technologies that are changing how they do business. Just as private sector entities are being transformed to adjust to their environment, American policing will need to do the same in order to operate in ways that are consistent with the needs of the contemporary employee. This is particularly noted in the instance of union officials, who previously relied on monolithic models of power in negotiation, starting to adopt interest-based negotiation models that allow for win-win bargaining. The result of this shift in bargaining process has given employees (union members) more ownership in the terms and conditions of employment. In these situations, where healthy labor relations exist, a shared process in organizational planning is becoming the cornerstone of progress quite in contrast to past union business models.³⁸

³⁸ **Batts, Anthony W. & Smoot, Sean Michael & Scrivner, Ellen**, *New Perspectives in Policing*, Harvard Kennedy School Program in Criminal Justice Policy and Management, National Institute of Justice, Document #: 623487, Police Leadership Challenges in a Changing World, July 2012.

Today, approximately 20% of members have a university degree. Several of the interviewees expressed the opinion that the dominant paramilitary model of organizational structure in the RCMP does not foster the work relationships necessary for most of their duties save those cases requiring a paramilitary formation. As Douglas LaBier writes on a similar note, in respect of the younger generation in America in general:

The younger careerist resists the traditional top-down decision making and the hierarchical structure of the typical organizations. Moreover, they perceive their companies as insufficiently responsive to their concerns. There is more than a communications gap between top management and the rest of the company. There is a values gap... The increasing complexity of organizations, together with the multi-layering which has come to characterize the bureaucratic hierarchy, turns off ambitious, action-oriented young careerist. Older careerists developed more of an orientation to things like job security, pay, and benefits. The new generation of managers and professionals, from the mid-'20s to the mid-'40s wants and expects much more involvement in decision making, greater meaning from work, and more opportunities for development. Having absorbed the legacy of the '60s, they do not hesitate to criticize people in leadership roles.³⁹

Within the RCMP there are a number of constituencies, including:

- The regular non-commissioned members, approximately 18,433
The number of women: 3830
- Commissioned Officers
The ranks of Inspector and Superintendent 604
The number of women: 72
- The senior officers between and including Chief Superintendents (50), Assistant Commissioners (22), Deputy Commissioners (6) total 78
- The number of women sworn police officers in the RCMP who are at the level of:
Assistant Commissioner 2 Chief Superintendent 6 *The number of women: 8*
- The civilian members 3780
The senior civilian members in the EX categories 31
The civilian members paymatched to Constable salary 902
The paymatched to public service salaries 2434
The civilian members touch pointed to the Public Service 444
- The public servants working in the RCMP approximately 6802
The number of women: 5418

³⁹ LaBier, Douglas, *Modern Madness, the Emotional Fallout of Success*, 1986, Addison Wesley, ISBN 0-201-11775-4, p. 141.

- The minority groups in the RCMP, women 15.3% visible minorities, 3.1% Aboriginal, and 4.9% Disabled

In the context of contemporary society, the requirement that RCMP recruits accept upon graduation to be posted to any RCMP location may have unintended consequences. This condition of work may require further analysis, especially as regards positions in the RCMP that necessitate a highly specialized education.

As the average age of candidates for the RCMP increases, especially in the case of those with a university education, significant numbers of these individuals share their lives with a spouse or partner who also has a career. This makes choosing a career in the RCMP more difficult and often results in qualified candidates not applying.

According to certain interviewees, this requirement for mobility, especially for women wishing to become commissioned officers, may act as a deterrent for some candidates. They place a higher value on the importance of their family members' social ties who are well integrated in their communities and local schools and they are unprepared to risk disturbing these relationships.

The new careerist seeks overall, a deeper sense of meaning from work. And a more rooted life, not so devoted to career as the sole purpose of existence. For example, recent surveys find that people are much less willing today than in past years to accept transfer and relocation in order to advance their career. Many report willingness to sacrifice, if necessary, career advancement, or switch to a slower track in exchange for the greater reward of an enriched and more rooted personal life, including interests outside of work⁴⁰.

The Federal Government, through the Treasury Board, decides and controls what salaries are paid in the public service. In the case of senior public servants in the Federal Government there is a committee of individuals from outside the public service to recommend appropriate salaries to the Treasury Board.

This includes senior public servants from level EX 1 to EX 5 and DM 1 to DM 4 whose salaries are recommended by the Advisory Committee on Senior Level Retention and Compensation⁴¹. The external committee, largely drawn from the private sector, ensures that such positions remain attractive to high caliber candidates from the private sector, as well as ensures that the public sector remains capable of retaining its senior officials⁴².

⁴⁰ **LaBier, Douglas**, *Modern Madness, the Emotional Fallout of Success*, 1986, Addison Wesley, ISBN 0-201-11775-4, p. 140

⁴¹ <http://www.tbs-sct.gc.ca/rp/adcm14-eng.asp>

⁴² <http://www.tbs-sct.gc.ca/hrh/adcm-eng.asp>

The clear intention of the Pay Council has been to provide a forum outside of the traditional hierarchical structure of the RCMP and at the same time include different perspectives based on pertinent expertise in order to reduce the impact of rank, as well as encourage more informed and free-flowing exchanges.

As the author Howell S. Baum underlines:

As more people participate in deliberations, they can each contribute relevant information, and decisions will be more knowledgeable. In addition, participants will support decisions and take responsibility for implementing them. A number of analysts argue that these conditions are particularly important for service work, including planning and administration, because, unlike manufacturing, it involves many unique cases and requires discretionary judgment rather than routine procedures (see Galbraith, 1977; Katz & Katz, 1978; Mintzberg, 1979; Perrow, 1970).

These results depend on whether new formal structures evoke new unconscious responses. Flattening the hierarchy can temper the psychological structure by permitting more satisfying, less threatening relationships. Insofar as workers are formally more equal, they are less likely to regard others as oppressors and to react hostilely, aggressively, anxiously, and defensively. Both real threats and unconscious embellishments of power differences may diminish. When social distance is less, superiors and subordinates may more freely discuss expectations and substantive problems. Thus members may clarify some ambiguities and reduce the situations in which they unconsciously draw threatening images of one another.

Flattening the hierarchy can also reduce the distortions produced by autonomous authority. Diminished distance between those who do exercise authority and their subordinates will make authority more visible and accessible, thus less autonomous. Regardless of the personality or style of people with authority, subordinates will know more about them and will be less likely to make vastly inappropriate assumptions about them. At the same time, a shallower organization reduces subordinates' dependency⁴³.

1.2.4 Treasury Board Jurisdiction over Work Conditions

The Treasury Board has significant powers with respect to the work conditions of public servants⁴⁴. These include determining general administrative policy in the federal public administration⁴⁵ and, with regards to human resources management, the determination of the terms and conditions of employment⁴⁶.

⁴³ **Baum, Howell S.**, *The Invisible Bureaucracy, The Unconscious in Organizational Problem Solving*, Oxford University Press 1987, ISBN 0-19-503961-0, p. 185-186.⁴⁴ *Financial Administration Act*, RSC 1985, c F-11

⁴⁴ *Financial Administration Act*, RSC 1985, c F-11

⁴⁵ *Financial Administration Act*, RSC 1985, c F-11, section 7 (1) (a)

⁴⁶ *Financial Administration Act*, RSC 1985, c F-11, section 7 (1) (e)

It should be remembered when considering the status of RCMP members that the terminology used in defining their status may vary under different statutes and the common law. Justice Décarý of the Federal Court of Appeal in the case of *Gingras v. Canada* stated:

A distinction has to be made depending on whether one is dealing with the ordinary law or what I would call the internal law of the federal administration. The fact that a person is called an "employee" for the purposes of the internal law of the Government does not necessarily mean that he is an "employee" in the ordinary legal sense.⁴⁷

Under the definitions of the *Financial Administration Act*, for the purposes of section 11.1 to 13⁴⁸, the RCMP is considered as part of the core public administration and listed as a department of the public service⁴⁹. The Treasury Board also can:

11.1 (1) In the exercise of its human resources management responsibilities under paragraph 7(1)(e), the Treasury Board may:

...

(b) provide for the classification of positions and persons employed in the public service;

(c) determine and regulate the pay to which persons employed in the public service are entitled for services rendered, the hours of work and leave of those persons and any related matters;

...

(f) establish policies or issue directives respecting the exercise of the powers granted by this Act to deputy heads in the core public administration and the reporting by those deputy heads in respect of the exercise of those powers;

....

(h) establish policies or issue directives respecting the disclosure by persons employed in the public service of information concerning wrongdoing in the public service and the protection from reprisal of persons who disclose such information in accordance with those policies or directives;

(i) establish policies or issue directives respecting the prevention of harassment in the workplace and the resolution of disputes relating to such harassment; and

⁴⁷ *Gingras v. Canada*, [1994] 2 FC 734, 1994 CanLII 3475 (FCA),

⁴⁸ *Financial Administration Act*, RSC 1985, c F-11, section 11. (1) "core public administration": Under the *Financial Administration Act*, at SCHEDULE IV, referring to Sections 3 and 11 of the said act, provides that the Royal Canadian Mounted Police, the Royal Canadian Mounted Police External Review Committee and the Royal Canadian Mounted Police Public Complaints Commission are portions of the core public administration. It is to be noted that at SCHEDULE V of the *Financial Administration Act*, referring to Sections 3 and 11 of the said Act, does not list the RCMP as one of the separate agencies.

⁴⁹ *Financial Administration Act*, RSC 1985, c F-11, section 11. (1) "public service"; Under the *Financial Administration Act*, SCHEDULE I.1, referring to Sections 2 and 3 of the said act, the RCMP is a Division or Branch of the Federal Public Administration

(j) provide for any other matters, including terms and conditions of employment not otherwise specifically provided for in this section, that it considers necessary for effective human resources management in the public service.

In addition to section 11.1 (1) (c) above of the *Financial Administration Act*⁵⁰, the *Royal Canadian Mounted Police Act* specifies that Treasury Board establishes the pay and allowances to be paid to members⁵¹.

The Treasury Board has jurisdiction for Parts I and II of the *Royal Canadian Mounted Police Superannuation Act*⁵² and the *Royal Canadian Mounted Police Pension Continuation Act*⁵³.

With regards to group insurance and benefit programs, the Treasury Board may establish or modify any group or other benefit programs of the federal public administration.⁵⁴

The Council has discussed the following elements of compensation in varying degrees:

Elements included in calculation of total compensation

Direct Compensation

Annual Salary
Annual Service Pay
Senior Constable Allowance
Shift Allowance

Pension/Savings

Defined benefit Pension Plan
Defined Contribution Pension Plan and Savings Plans
Severance and Gratuity Plans

Group benefits

Basic Life Insurance
Optional Life Insurance
Accidental death & Dismemberment Survivor Income Benefits
Dental Insurance

⁵⁰ Financial Administration Act, RSC 1985, c F-11, section 11.1 (1) (c)

⁵¹ Royal Canadian Mounted Police Act, RSC 1985, c R-10, section 22. (1).

⁵² Financial Administration Act, RSC 1985, c F-11, section 7 (2) (d).

⁵³ Chapter R-10 of the Revised Statutes of Canada, 1970; Financial Administration Act, RSC 1985, c F-11, section 7 (2) (e).

⁵⁴ Financial Administration Act, RSC 1985, c F-11, section 7.1 (1).

Healthcare Benefits
Sick Leave and Short-Term disability
Long-term Disability
Retirees' benefits
Health Services Spending Account
Maternity & Parental leave

Paid Time Off

Vacation Entitlement
Designated Paid Holidays
Paid Meal Breaks

Elements compared on a descriptive basis only

Leave Policy and Practices

Compassionate Leave
Leave in Lieu of Overtime
Special Paid Leave
Leave Without Pay
Other Paid Leave

Compensation for Work Conditions

Overtime & other Payments
Rescheduling Allowance
Standby Pay
Acting pay

Miscellaneous Allowance

Special Duty Allowance
Plainclothes Allowance
Kit Allowance
Other Allowances

Perquisites

Car Allowance
Cellular Phone
Telephone Allowance
Other

There is another issue that ought to be addressed. It concerns the directive concerning Isolated Posts and Government Housing,⁵⁵ which is co-developed by participating bargaining agents and public service employers under the by the National Joint Council. The directive stipulates that it applies to:

- a. all departments and other portions of the Public Service of Canada listed in Schedules I and IV of the Financial Administration Act;

Under the following section of this law there is a provision for co-development:

- 11. Co-development of workplace improvements by the employer and a bargaining agent may take place under the auspices of the National Joint Council or any other body they may agree on.⁵⁶

Presently, the RCMP has representation on the National Joint Council with respect to the development of the directive by a member from National Compensation. However, it has no vote on the National Joint Council.

Under Interpretation, at section 2(1), “employee”, except in Part 2, means a person employed in the public service, other than:

- (d) a person who is a member or special constable of the Royal Canadian Mounted Police or who is employed by that force under terms and conditions substantially the same as those of one of its members.⁵⁷

Thus, RCMP members are not covered under the *Public Service Labour Relations Act*.

1.2.5 RCMP Jurisdiction over Work Conditions

The sources of the authority of the Commissioner of the RCMP for the control, management and over certain work conditions can be found in several statutes, including the *Royal Canadian Mounted Police Act*, which provides that:

⁵⁵ *Isolated Posts and Government Housing Directive*
<http://www.njc-cnm.gc.ca/directive/index.php?did=4&lang=eng>

⁵⁶ *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2 at section 11.
<http://www.canlii.org/en/ca/laws/stat/sc-2003-c-22-s-2/latest/sc-2003-c-22-s-2.html>

⁵⁷ *Public Service Labour Relations Act*, S.C. 2003, c. 22, Interpretation at section 2 (1)

5. (1) The Governor in Council may appoint an officer, to be known as the Commissioner of the Royal Canadian Mounted Police, who, under the direction of the Minister, has the control and management of the Force and all matters connected therewith.⁵⁸

Under the *Financial Administration Act*⁵⁹, the deputy head of a portion of the public service, namely the Commissioner of the RCMP, may:

12. (1) Subject to paragraphs 11.1(1)(f) and (g), every deputy head in the core public administration may, with respect to the portion for which he or she is deputy head,

(a) determine the learning, training and development requirements of persons employed in the public service and fix the terms on which the learning, training and development may be carried out;

(b) provide for the awards that may be made to persons employed in the public service for outstanding performance of their duties, for other meritorious achievement in relation to their duties or for inventions or practical suggestions for improvements;

(c) establish standards of discipline and set penalties, including termination of employment, suspension, demotion to a position at a lower maximum rate of pay and financial penalties;

(d) provide for the termination of employment, or the demotion to a position at a lower maximum rate of pay, of persons employed in the public service whose performance, in the opinion of the deputy head, is unsatisfactory;

(e) provide for the termination of employment, or the demotion to a position at a lower maximum rate of pay, of persons employed in the public service for reasons other than breaches of discipline or misconduct; and

(f) provide for the termination of employment of persons to whom an offer of employment is made as the result of the transfer of any work, undertaking or business from the core public administration to anybody or corporation that is not part of the core public administration.⁶⁰

In terms of work conditions, the Commissioner may:

- Direct the manner in which the work is to be carried out
- Appoint members of the Force other than commissioned officers (RCMP Act s. 7 (1) (b)). However the ranks and the numbers in each are prescribed by Treasury Board (RCMP Act s.7 (2)). (The new proposed amendments to the act will provide the Commissioner with sole authority to appoint and revoke officer commissions up to Deputy Commissioner.)
- Revoke certain appointments (RCMP Act s.7 (1))

⁵⁸ *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 , section 5.(1),
<http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-r-10/latest/rsc-1985-c-r-10.html>

⁵⁹ *Financial Administration Act*, RSC 1985, c F-11 , SCHEDULE I, referring to Sections 2 and 11.

⁶⁰ *Financial Administration Act*, RSC 1985, c F-11 , section 12. (1) (a to f).

- Designate employees as “peace officers” (s.7 (1) d) RCMP Act)
- Recruit
- Train
- Hire
- Grant promotions
- Transfer
- Schedule work
- Administer discipline
- Administer health assessments
- Administer messes and lounges
- Administer the Chaplaincy Program

The Commissioner may make rules for the general administration and organization of the RCMP. The Commissioner’s rules are referred to in the RCMP Act as “Commissioner’s standing orders”.

Certain powers of the Commissioner to make “standing orders” may not, however, be delegated.⁶¹

The Commissioner also constitutes the final level in the grievance process and the Commissioner’s decision in respect of any grievance is final and binding and, except for judicial review under the *Federal Courts Act*, is not subject to appeal to or review by any court.⁶²

In *Clark v. Canada*⁶³, Justice Dubé of the Trial Division of the Federal Court found that the RCMP was at fault because of its failure to take reasonable steps to ensure that sexual harassment did not occur. As such, Alice Clark, a member, could sue the Federal Government because the RCMP’s managing officers and other constables had not exercised their duty of care. The court determined that the vicarious liability existed. (Vicarious liability, simply put, is that the managers or the representatives of the employer were negligent, or that the management failed to provide a safe work environment, and that therefore the employer, in this case the RCMP’s management, rendered the Crown liable).

Authority over the RCMP is shared amongst different departments and offices, including:

- The Minister of Public Safety is responsible to Parliament for the RCMP.
- The Commissioner of the RCMP reports to the Minister of Public Safety (for non-criminal administrative matters).

⁶¹ See s. 5(2).

⁶² Royal Canadian Mounted Police Act, RSC 1985, c R-10 , section 32 (1); see also 32 (1), 42 (4), 42 (6), 45.16 (7), 45.26 (6).

⁶³ *Clark v. Canada*, [1994] 3 FC 323,

- The Governor in Council appoints, by an Order in Council, the Commissioner of the RCMP as well as the senior officers of the RCMP including the ranks of Chief Superintendent, Assistant Commissioner and Deputy Commissioner.
- The salaries, benefits and allowances of commissioned officers at the rank of Chief Superintendent and above are decided by Treasury Board after considering the recommendations of a Committee from outside the Public Service

In addition to this fragmentation of the employer's role there are also stakeholders that, while legally not employers, have a substantial interest in the terms and conditions that members receive for their work. They include the provinces except Québec and Ontario, the Territories, approximately 150 municipalities and other parties contracting for RCMP services. Nonetheless, under their contracts with the RCMP and in accordance with the formula for cost-sharing, they collectively pay a substantial portion of the RCMP's budget.

It is difficult for frontline members, often thousands of miles away, to understand the fragmentation of the employer's role amongst different departments and offices within the Federal Government. The recent rollback of increases in compensation by the Treasury Board, which had earlier agreed to such increases, demonstrates the stark reality of the unequal power that underlies the relationship between members and the federal apparatus with divided responsibilities.

According to interviews conducted during this Inquiry, this fragmentation of the role of an employer amongst different Federal bodies to some extent supports members' perception of a denial of accountability and the consequent dynamics and atmosphere in the workplace.

The diffused authority over all the factors that play a role in creating the work environment often provides for a practical and available defense against being held accountable for anything beyond one's limited authority or to being held responsible for the whole.

This concern is echoed in *Governance in the Twenty-first Century, Revitalizing the Public Service*, which reviews different models of governmental systems, which either seek commitment, establish accountability for public servants as well as for politicians or attempt to enhance accountability by adopting performance management and reporting regimes for managing outputs and outcomes. It also addresses the issue of the possible backlash that can be produced when there is:

a "no-one-to-blame" outcome (Gregory 1995;1996;1998); a reaction against the fragmentation of government into separate managerial "silos", or simply a reaction against patronage overload from hybrid or managerial bargains.⁶⁴

⁶⁴Peters, B. Guy & Savoie, Donald J. (editors), *Governance in the Twenty-first Century, Revitalizing the Public Service*, The Canadian Center for Management Development 2000, ISBN 0-7735-2130-5, p. 201.

There is a fundamental reality to be considered in examining the mandate of the Council, namely, the relative imbalance between the power of the Treasury Board and, if necessary, Parliament, compared to that of the members through the SRRs. The fact is that the Parliament of Canada may lawfully intervene in the work conditions of public servants, including compensation issues, even after a consensus is reached on an issue with the Treasury Board.

Recently it did so by passing *The Expenditure Restraint Act (ERA)*⁶⁵, which limited compensation increases under the relevant sections of the Act. In so doing, Parliament assumed the function of the Treasury Board to limit pay raises.

According to the decision of the Federal Court Trial Division, however, the Treasury Board's unilateral right to alter employment conditions that it had previously decided and announced before the legislation was passed, was held to be restricted and subject to the obligation of consultation with the public servants representatives.⁶⁶ It is to be noted that the effects of the *ERA* measures were temporary, since the limit on wage increases was to expire on March 31, 2011.

Consequently, there is a need for at least two processes in which the SRRs could consult each of the Treasury Board and the RCMP under section 2(d) of the Charter.

To discuss these different matters at the outset, given the challenges ahead for the RCMP in separate forums, would appear to be unsuitable for an integrated approach to harmonious working relationships. Rather, an initial process for the exchange of views on pertinent issues as a whole would provide a forum more likely to further the participants' understanding of other perspectives.

The present mandate of the Council is narrow. It is restricted generally to the subject of making recommendations to the Commissioner with respect to pay, benefits and allowances of the RCMP. The question that now arises pursuant to the decision of the Supreme Court in *Fraser* is: what is the appropriate mandate going forward, taking into consideration the context and culture of the RCMP?

Given the clarification of the rights of the SRR Program to consult with the employer concerning workplace goals which are broader than salary and benefits, it would appear more helpful that these goals be considered as a whole before an independent chairperson. This is especially true given the added obligations that such consultations be conducted in good faith, as defined by the courts.

⁶⁵ *The Expenditure Restraint Act*, S.C. 2009, c. 2, s. 393 (the "*ERA*").

⁶⁶ *Meredith v. Canada (Attorney General)* 2011, [2011] F.C.J. No. 948. This decision has been appealed and the court decided following the death of one of the three judges of Federal Court of Appeal who heard the arguments, to re hear the arguments with another third judge before the decision is rendered.

1.2.6 Police Independence from the Executive Branch of Government

A further consideration when examining the mandate of the Council is the recognition and protection of the independence of police from government with regards to their law enforcement powers as holders of a public office.

Police are governed by the constitutional principle to the effect that, in police matters (as distinguished from administrative matters), they are independent from the executive branch of government. Nonetheless, the Commissioner reports to the Minister of Public Security and Preparedness regarding the administration of the RCMP. The Minister, in turn, answers to Parliament.

An often-quoted research paper commissioned by the Ipperwash Inquiry it explains the challenge:

On the one hand, the idea that the police are a law unto themselves is unacceptable in a democracy that prides itself on restraint in the use of coercive state-sponsored force and on accountability for the use of such powers. On the other hand, the idea that the police are directed by the government of the day raises concerns about improper partisan concerns influencing or appearing to influence the machinery of justice. There is a need to respect and balance both the principles of independence and accountability and to do so in a manner that advances our aspirations to be a democratic nation that is governed by law⁶⁷.

The Supreme Court of Canada in the landmark case of *R. v. Campbell*⁶⁸, held that:

27 The Crown's attempt to identify the RCMP with the Crown for immunity purposes misconceives the relationship between the police and the executive government when the police are engaged in law enforcement. A police officer investigating a crime is not acting as a government functionary or as an agent of anybody. He or she occupies a public office initially defined by the common law and subsequently set out in various statutes. In the case of the RCMP, one of the relevant statutes is now the Royal Canadian Mounted Police Act, R.S.C., 1985, c. R-10

...

33 While for certain purposes the Commissioner of the RCMP reports to the Solicitor General, the Commissioner is not to be considered a servant or agent of the government while engaged in a criminal investigation. The Commissioner is not subject to political direction. Like every other police officer similarly engaged, he is answerable to the law and, no doubt, to his conscience. As Lord Denning put it in relation to the Commissioner of Police in *R. v. Metropolitan Police Comr., Ex parte Blackburn*, [1968] 1 All E.R. 763 (C.A.), at p. 769:

⁶⁷ **Roach, Kent**, *The Overview: Four Models of Police Government Relations, Research Papers Commissioned by the Ipperwash Inquiry* (2007), http://www.ipperwashinquiry.ca/policy_part/meetings/pdf/Roach.pdf, p. 3; see also: Susan Delacourt "To serve and protect its political bosses" *Toronto Star* 17 April, 2004.

⁶⁸ *R. v. Campbell*, [1999] 1 SCR 565

I have no hesitation, however, in holding that, like every constable in the land, he [the Commissioner of Police] should be, and is, independent of the executive. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.⁶⁹ [Emphasis added.]

In the *Chair's Final Report Following a Public Hearing* concerning the RCMP's actions during the Asia-Pacific Economic Cooperation (APEC)⁷⁰, Mr. Hughes proposed the following five principles concerning the RCMP's independence from government:

- 1) When the RCMP are performing law enforcement functions (investigation, arrest and prosecution) they are entirely independent of the federal government and answerable only to the law.
- 2) When the RCMP are performing their other functions, they are not entirely independent but are accountable to the federal government through the Solicitor General of Canada or such other branch of government as Parliament may authorize.
- 3) In all situations, the RCMP are accountable to the law and the courts. Even when performing functions that are subject to government direction, officers are required by the RCMP Act to respect and uphold the law at all times.
- 4) The RCMP are solely responsible for weighing security requirements against the Charter rights of citizens. Their conduct will violate the Charter if they give inadequate weight to Charter rights. The fact that they may have been following the directions of political masters will be no defense if they fail to do that.
- 5) An RCMP member acts inappropriately if he or she submits to government direction that is contrary to law. Not even the Solicitor General may direct the RCMP to unjustifiably infringe Charter rights, as such directions would be unlawful.

Shirley Heafey, the then Chair of *The Commission for Public Complaints Against the RCMP*, having considered the principles enumerated above by Mr. Hughes, concluded:

I concur with the principles which Mr. Hughes has enunciated. However, I do not agree that statutory codification is required with regard to police independence in law enforcement generally, nor in matters of protective policing specifically.... In matters of criminal investigation, arrest and prosecution, the [Supreme Court] has clearly articulated that the police are entirely independent of

⁶⁹ *R. v. Campbell*, [1999] 1 SCR 565

⁷⁰ <http://www.cpc-cpp.gc.ca/prt/rep/phr/apec/fr-rf-eng.aspx>

government and are answerable to the law. This clear understanding exists and functions well without codification⁷¹.

In *R. v. Campbell*, Justice Binnie, writing for a unanimous Supreme Court, held that:

The Rule of Law

18 It is one of the proud accomplishments of the common law that everybody is subject to the ordinary law of the land regardless of public prominence or governmental status. As we explained in *Reference re Secession of Quebec*, 1998 CanLII 793 (SCC), [1998] 2 S.C.R. 217, at p. 240, the rule of law is one of the “fundamental and organizing principles of the Constitution”, and at p. 258, it was further emphasized that a crucial element of the rule of law is that “[t]here is ... one law for all”. Thus a provincial premier was held to have no immunity against a claim in damages when he caused injury to a private citizen through wrongful interference with the exercise of statutory powers by a provincial liquor commission: *Roncarelli v. Duplessis*, 1959 CanLII 50 (SCC), [1959] S.C.R. 121. Professor F. R. Scott, who was counsel for the successful plaintiff, Roncarelli, in that case, subsequently observed in *Civil Liberties & Canadian Federalism* (1959), at p. 48:

... it is always a triumph for the law to show that it is applied equally to all without fear or favour. This is what we mean when we say that all are equal before the law.

The Supreme Court of Canada explained in another decision how certain constitutional principles which are not written in the Constitution can nevertheless form part of the Constitution and have the force of law:

54 Underlying constitutional principles may in certain circumstances give rise to substantive legal obligations (have “full legal force”, as we described it in the *Patriation Reference*, *supra*, at p. 845), which constitute substantive limitations upon government action. These principles may give rise to very abstract and general obligations, or they may be more specific and precise in nature. The principles are not merely descriptive, but are also invested with a powerful normative force, and are binding upon both courts and governments. “In other words”, as this Court confirmed in the *Manitoba Language Rights Reference*, *supra*, at p. 752, “in the process of Constitutional adjudication, the Court may have regard to unwritten postulates which form the very foundation of the Constitution of Canada”⁷².

Another major controversy over government involvement in policing arose over the activities of the RCMP security services under the watch of the Trudeau Liberal government in the wake of the 1970 October crisis. This episode resulted in sustained public debate about the appropriate relationship between the police and the government and in important recommendations by the McDonald Royal Commission.

As Kent Roach points out in his introduction of his paper for the Ipperwash Inquiry:

⁷¹ **Heafey, Shirley**, the then Chair of the Commission for Public Complaints Against the RCMP, in *Chair's Final Report Following a Public Hearing, IV, Conclusions and Recommendations*, at p. 4.

⁷² *Reference by the Governor in Council, re Secession of Quebec*, [1998] 2 SCR 217/1998 CanLII 793 (SCC).

The *Campbell* case has arguably elevated police independence in criminal investigations from a constitutional convention that in practice restrains the exercises of Ministerial powers to a component of one of Canada's organizing constitutional principles, namely the rule of law.⁷³

Is there a valid argument to be made that independence from government implicitly requires that appropriate salaries and benefits be paid to an office holder?

In any case, it is useful to refer to the reasoning followed by the Supreme Court of Canada regarding the relationship between remaining independent and the level of compensation one receives. The provincial judiciary had argued that appropriate salary and benefits were necessary to ensure the independence of the judiciary and that this was in the interest of the public. The Court held in the case of *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island; Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island*,⁷⁴ that the Constitution protects judicial salaries from falling below an acceptable minimum level.

Chief Justice Lamer, writing for the majority of the Supreme Court of Canada, held that:

193 I have no doubt that the Constitution protects judicial salaries from falling below an acceptable minimum level. The reason it does is for financial security to protect the judiciary from political interference through economic manipulation, and to thereby ensure public confidence in the administration of justice. If salaries are too low, there is always the danger, however speculative, that members of the judiciary could be tempted to adjudicate cases in a particular way in order to secure a higher salary from the executive or the legislature or to receive benefits from one of the litigants. Perhaps more importantly, in the context of s. 11(d), there is the perception that this could happen. As Professor Friedland has written, *supra*, at p. 53:

We do not want judges put in a position of temptation, hoping to get some possible financial advantage if they favour one side or the other. Nor do we want the public to contemplate this as a possibility.

I want to make it very clear that the guarantee of a minimum salary is not meant for the benefit of the judiciary. Rather, financial security is a means to the end of judicial independence, and is therefore for the benefit of the public. As Professor Friedland has put it, speaking as a concerned citizen, it is "for our sake, not for theirs" (p. 56).

Gerald T.G. Seniuk comments:

⁷³ Professor **Ken Roach's** "*The Overview: Four Models of Police Government Relations*", Research Papers Commissioned by the Ipperwash Inquiry (2007), http://www.ipperwashinquiry.ca/policy_part/meetings/pdf/Roach.pdf, p. 4.

⁷⁴ *Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.*, [1997] 3 SCR 3.

The Supreme Court has provided a necessary mechanism for the setting of judicial salaries. It is an arm's length process that respects parliamentary supremacy and judicial independence. It incorporates many of the ideas developed over the past decade by the judiciary, governments and the legal profession. The same constitutional principles of independence now apply to all courts. These principles and the commission process will help the justice system deal with any future disputes in a civil, non-confrontational manner. Had the court not acted, the trend would have continued toward greater politicization and confrontation because of the absence of a constitutionally appropriate method to resolve disputes between these two primary constitutional institutions... Had that happened there was a serious risk of undermining the public's confidence in the administration of justice. The judgment of the court has not only averted that danger, but also provided principles that supercede traditional superior and inferior divisions between courts. These principles will help resolve any future issues arising from the fundamental problems posed by a two tiered trial system.⁷⁵

The fourth quadrennial Independent Judicial Pay Commission is tasked with formulating recommendations for the Minister of Justice regarding the judicial salaries for the approximately 1100 federally appointed judges, which report was submitted on May 15th, 2012. The Commission's Report rejected the Superior Court Judges Association's demands for millions of dollars of catch-up pay and at the same time rejected the Federal Government's proposition to cap the judges' automatic annual increases for inflation to 1.5%.

Gerald T.G. Seniuk, citing counsel Thomas Heintzman concerning judicial independence writes:

The judges are being treated for salary purposes as if they were civil servants. Judges are not civil servants and lumping them with civil servants creates the very impression of lack of independence that [the Charter] was intended to prevent. Civil servants are expected to carry out the government's wish and are paid to do so; judges are not... A reasonable person, if he or she understood the relevant principles of law, would fear for the institutional independence of the provincial court. He or she would believe that if judges are treated like civil servants, then they will act like civil servants. He or she would believe that the exercise of a unilateral power over a judge would sooner or later have an influence on that judge."⁷⁶

For a review of police powers and accountability, the work of Robert Reiner⁷⁷, while based on British law, is in certain aspects analogous and provides an interesting overview of the subject.

⁷⁵ **Gerald T.G. Seniuk**, of the Provincial Court, Saskatoon, Saskatchewan. "Judicial Independence and the Supreme Court of Canada" (1998) 77 Canadian Bar Review 381, for the submission of Thomas Heintzman on behalf of the Canadian Bar Association, see the conclusion, http://judges-juges.ca/fr/de_nous/docs/seniuk.pdf, See the transcript of the hearing held the week of December 2, 1996. See *Judicial Independence -Canada 1996* (North Battleford: Allyssa Studios, 1997) Gerald Seniuk, ed.

⁷⁶ *Id.* 54

⁷⁷ **Reiner, Robert**, *The Politics of the Police, Third Edition*, Oxford University Press 2000, ISBN 978-0-19-876543-1, p. 167-198.

1.2.7 RCMP Peace Officers' Duties as Statutory Office Holders

This Constitutional principle of the rule of law ensuring the independence of statutory office holders, such as the police, in the exercise of their discretion is for the protecting and benefit of the public. An important consideration for police is an awareness and consideration of the influences that could interfere with the exercise of the statutory powers which are conferred upon peace officers who are members of the RCMP. One such influence is direction from the executive of government. Another, often more subtle is the structural and cultural influences on the peace officer by his or her organization.⁷⁸

The 1993 *Pay Council Report* underlined this concern and recommended:

113. RCMP members have rights and obligations which differ significantly from other public servants of a subordinate level. Thus, they require a distinct, more formal structure and process for determining compensation.

As “regular members” in the RCMP, peace officers have two distinct roles. One is when exercising their duties as office holders with original statutory authority, including exercising discretion to arrest when enforcing a statutory law such as the *Criminal Code*. When an RCMP officer exercises discretion of this type, he or she is not a subordinate. In their role as holders of a public office under a statute, the independent exercise of the peace officer’s broad discretion while conducting a criminal investigation or arrest is limited only by the legal principles that such duties be exercised reasonably and in accordance with the Constitution.

The other role is when as a member of the RCMP executes duties such as transporting prisoners or directing traffic in which they are subordinate to the orders of their superiors. This places the member in a more traditional role as a subordinate public servant.

The contrast between the self-directed control a regular member is to exercise over his or her duties, as an office holder, and the necessity of a command and control rank structure to ensure that the other organizational duties a member executes as a subordinate, is striking.

While undertaking some of their most consequential duties as office holders, such as the use of force, including lethal force, or the arrest or laying of information with crown counsel, they are not subordinates. Yet when performing some of their less consequential duties, they are subject to the orders of their superiors.

The status of an individual police officer is described in the unanimous judgment of the Supreme Court of Canada in *R. v. Campbell*, cited above and reproduced here for convenience:

⁷⁸ **Groeneveld, Richard F.**, *Arrest Discretion of Police Officers, The Impact of varying Organizational Structures*, LFB Scholarly Publishing 2005, ISBN 1-59332-125-2; see also: **Beech, Andrew Evan**, *Peeling an Apple: Police Discretion from an Officer’s Perspective in Terms of its Definition, Education, and the Process of Routinization*, A Thesis submitted in partial fulfillment of the requirements for the degree of Master of Arts, Wright State University 2008.

27 ... A police officer investigating a crime is not acting as a government functionary or as an agent of anybody. He or she occupies a public office initially defined by the common law and subsequently set out in various statutes. In the case of the RCMP, one of the relevant statutes is now the *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10.⁷⁹

Justice Le Dain of the Federal Court of Appeal, as he then was, in *Laroche v. Canada (Royal Canadian Mounted Police)* described the nature of an RCMP member's status as follows:

29 The provisions of the *Royal Canadian Mounted Police Act* to which I referred earlier, and in particular sections 13 and 15, indicate that a member of the Force other than an officer is not in the ordinary master and servant relationship but is the holder of an office that is recognized and regulated by statute. It is no less an office because upon appointment a member of the Force is required to sign articles of engagement for a period not exceeding five years and by section 53 of the *Act* (as well as section 37 of the *Federal Court Act*) he is deemed, for purposes of liability, to be a servant of the crown. This has been the view taken of the status of a police constable to whom in my opinion a member of the Force should be assimilated.⁸⁰

In his or her statutory duties as an office holder, the RCMP member must rely on his or her own judgment, all the while following the Charter, the principles enunciated by the courts as to the reasonable exercise of their powers of arrest under the relevant statutory authority, the Rule of Law, independence from the exercise of government influence and their own common sense.

In such circumstances, they are not acting as a subordinate employee, but rather are exercising the independent discretion accorded them by law. When we say that police officers are “on duty 24/7”, it is with reference to this “office holder” role. The “off-duty” police officer who comes across a robbery in progress is “duty-bound” to take reasonable action. In doing so, said officer is exercising his or her “office holder” role and is not subordinate in the exercise of this broad statutory discretion with which they are entrusted.

There are, however, limits to the right of a peace officer to continue an investigation. In *Wool v. Canada* [1981] F.C.J. No. 506, Justice Dubé of the Trial Division of the Federal Court, ruled that a commanding officer had authority to order the cessation of an investigation by a member of the RCMP.

In *The Will to Manage*, Marvin Bower⁸¹, a former managing director of McKinsey & Company, provides a practical approach in how to structure a workplace relationship that provides for a more professional model, including self-direction and accountability.

⁷⁹ *R. v. Campbell*, [1999] 1 SCR 565.

⁸⁰ *Laroche v. Canada (Royal Canadian Mounted Police)* [1981] F.C.J. No. 1108 ; see also: *Brown v. Waterloo Regional Board of Commissioners of Police* (1982), 37 O.R. (2d) 277 (H.C.); rev'd in part (1983), 43 O.R. (2d) 113 (C.A.).

⁸¹ **Bower, Marvin**, *The Will to Manage, Corporate success through Programmed Management*, McGraw-Hill Book Company 1966, Library of Congress Number: 66-26491-06735, page 237, attitudes, Freedom to act

The distinction between the dual roles of RCMP members was clarified by the Federal Court of Appeal in *Gingras v. Canada*. The issue in this case was whether RCMP members were entitled to a Public Service bonus. Justice Décary stated that the ordinary rules of contract were not applicable to the RCMP members. The judge examined the federal statutes and their various characterizations of members' status:

A distinction has to be made depending on whether one is dealing with the ordinary law or what I would call the internal law of the federal administration. The fact that a person is called an "employee" for the purposes of the internal law of the Government does not necessarily mean that he is an "employee" in the ordinary legal sense

In the ordinary law public servants form a special category of employees and by a long tradition the ordinary rules of contract are not applicable to them⁸²

In the case of *Dunsmuir v. New Brunswick*, the Supreme Court of Canada held that a public employee's employment relationship was governed by the ordinary rules of contract⁸³. It is important to underline that this case involved the judicial review of a decision of an adjudicator and the standard of review to be applied. The adjudicator had held that the individual was entitled to procedural fairness. The Supreme Court of Canada determined that the individual was not entitled to procedural fairness when dismissed since the relationship was governed by the ordinary rules of contract.⁸⁴

With respect to their public office, police who exercise their enforcement discretion, such as the power to arrest and the use of appropriate force, do so independently under statutory law. The limits on such acts are that they must be done reasonably and in accordance with the Constitution and the principles enunciated by the Courts. This aspect of their duties is more analogous to that of lawyers or engineers, who are largely self-governing, have greater autonomy and wider discretion, and are subject only to the application of the law, principles of their professions and the discipline of their professional governing bodies.

As the gatekeepers to the processes of the criminal justice system, police also decide who does not enter that system. Extremely important consequences can flow for the individual subject to

independently p. 238; opportunity to advance on merit 240; achievement 241; rewards 243; commitment 244; worthwhileness of work 246; 250 relationship of persons work to organizational performance; leadership 250-254.

⁸²*Gingras v. Canada* 1994 CanLII 3475 (FCA), [1994] 2 F.C. 734 at pp. 756-757. [Emphasis added]

⁸³*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, 2008 SCC 9 (CanLII). ("regardless of his or her status as a public office holder, the applicable law governing his or her dismissal is the law of contract, not general principles arising out of public law").

⁸⁴The relevant statute, the *Civil Service Act*, S.N.B. 1984, c.C-5.1, provided, at s. 20 that: "Subject to the provisions of this Act or any other Act, termination of the employment of a deputy head or an employee shall be governed by the ordinary rules of contract".

this discretion. The ramifications from the exercise of police discretion from the decisions taken by the criminal operations officers, as to which organized crime group's activities will be investigated, given the RCMP's financial and human resources, influence what cases judges will ever be called upon to hear.

These decisions require as much integrity, strategic thinking and a capacity to evaluate the return on the expenditure of often substantial amounts of public funds, as many civil servants or other instances in the criminal justice system.

Chief Justice Laskin, writing with reference to the status of a probationary police constable in *Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police*⁸⁵, stated that “we are dealing with the holder of a public office, engaged in duties connected with the maintenance of public order and preservation of the peace, important values in any society”

The fact that a sworn police officer is for the purpose of the *Financial Administration Act* a public servant under the definition does not negate another role assumed by the individual. Rather, the duties under other statutes, for example the *Criminal Code*, render such a limited description of a peace officer incomplete. Clearly, a police officer holds a public office under common and statutory law. The peace officer role is not one which is subordinate. Rather, it is exercised independently. This distinction clearly sets the RCMP peace officer apart from a public servant under a statute such as the *Financial Administration Act*.

1.2.8 Balancing the Two Roles of the Police

Trust can be thought of as being on a pendulum, from the extremes of no trust to absolute trust. The degree of trust often varies depending on with whom the trust is placed and the general context. There is a tendency to have greater trust between parties where discretion is highest and the division of power more balanced⁸⁶.

It is commonplace within the RCMP culture not to challenge a superior officer unless one is prepared, depending on the attitude of the specific officer, to suffer the potential consequences. Is it worth standing up for what is right when there is a potential cost to one's own career and finances, with possibly an impact on one's family?

The departure of senior officers following their challenges to the appropriateness of the behavior of two Commissioners during the past decade has brought to light the conflicts that can arise

⁸⁵ *Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police*, 1978 CanLII 24 (SCC), [1979] 1 S.C.R. 311, at p. 322; See also: *McCleave v. City of Moncton* (1902), 32 S.C.R. 106.

⁸⁶ **Fox, Alan**, *beyond Contract Work, Power and Trust Relations*, Farber & Farber Limited, ISBN: 0571 10469.

between a subordinate and a superior member of the RCMP. Specifically, the role of a member as an office holder can conflict with their role as a member subordinate to a higher rank.

Take the case of a commissioned officer superior in rank who violates his or her obligations under the duties of RCMP members, *Part IV, Discipline, Standards*, of the *Royal Canadian Mounted Police Act*, which reads as follows:

37. It is incumbent on every member

- (a) to respect the rights of all persons;
- (b) to maintain the integrity of the law, law enforcement and the administration of justice;
- (c) to perform the member's duties promptly, impartially and diligently, in accordance with the law and without abusing the member's authority;
- (d) to avoid any actual, apparent or potential conflict of interests;
- (e) to ensure that any improper or unlawful conduct of any member is not concealed or permitted to continue;
- (f) to be incorruptible, never accepting or seeking special privilege in the performance of the member's duties or otherwise placing the member under any obligation that may prejudice the proper performance of the member's duties;
- (g) to act at all times in a courteous, respectful and honourable manner; and
- (h) to maintain the honour of the Force and its principles and purposes.

40. (1) Where it appears to an officer or to a member in command of a detachment that a member under the command of the officer or member has contravened the Code of Conduct, the officer or member shall make or cause to be made such investigation as the officer or member considers necessary to enable the officer or member to determine whether that member has contravened or is contravening the Code of Conduct.⁸⁷ (underlined by author)

Does a member with a lesser rank have the statutory duty as an office holder to investigate the possible criminal behavior of a superior officer under s 37 in light of s. 40?

As is pointed out by the authors Ryan and Oestreich, messengers with bad news often pay a heavy price. They offer the following situations as those likely to increase the risk for the messenger's demise.

- The person in authority worries that if the problem comes to light, they may be seen as unable or incompetent to handle the situation, especially by the superiors of the person in authority.
- The listener in authority may interpret or make an assumption that the motives of the messenger have a personal hidden agenda involving their own ambition.
- The leadership or persons in authority have failed to establish a culture where problems are prized possessions-learning opportunities, essentially to continue improvement and innovation.
- The culture accepts and recognizes that messengers are necessary as they are not the creators

⁸⁷ Royal Canadian Mounted Police: Act, RSC 1985, c R-10 <http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-r-10/latest/rsc-1985-c-r-10.html>

but rather those who help to identify them⁸⁸.

Perhaps the worst scenario is when the messenger is retaliated against by some disciplinary or other measures such as secondment, no longer being eligible for promotion or being made to “walk the plank”.

The price the individuals who confronted the two past RCMP Commissioners were seen to pay has left an unfortunate example of the consequences of acting independently and making one's views known to someone in authority.

In terms of the exercise of discretion by a police officer, it is interesting to note how the hierarchical structure of organizations may hinder and reduce the span of this discretion⁸⁹.

The work of Richard F. Groeneveld⁹⁰ is worth consulting. As a police commander with 26 years of service with the Phoenix Police Department, he has illuminated the impact of varying organizational structures on the exercise of police discretion to arrest⁹¹. What is interesting is that much of Groeneveld's analysis of the factors in his study of the particular impact of structure can be relevant in some respects to police behavior generally.

Those who had the courage to stand up for what was right were seen to leave the organization, whether due to health issues suffered during the prolonged conflict or to no longer being wanted or to not being made to feel comfortable. This occurred after long, respected careers. The impact of this situation when attempting to build a learned and healthy culture should not be underestimated.

The authors Ryan and Oestreich suggest that to fully turn around the “Shoot the messenger” syndrome, the leadership in the organization has to make a conscious effort to reward the people who speak up. This can present difficult challenges for leaders lacking the wisdom, confidence and sense of self-esteem required for such an open-minded reaction.

In *A Matter of Trust*, the report of the Independent Investigator into Matters Relating to RCMP Pension and Insurance Plans, the inquiry headed by Mr. Brown stated:

- The internal investigations concluded there had been wrongdoing on the part of senior officers; however, the RCMP was precluded from taking disciplinary action because their own limitation

⁸⁸ **Ryan, Kathleen D. & Oestreich, Daniel K.**, *Driving Fear Out of Workplace, How to Overcome the Invisible barriers to Quality, Productivity, and Innovation*, Jossey-Bass Publishers 1991, ISBN 1-55542-317-5, p. 154:

⁸⁹ **Beech, Andrew Evan**, *Peeling an Apple: Police Discretion from an Officer's Perspective in Terms of Definition, Education, and the Process of Routinization*, A Thesis submitted in partial fulfillment of the requirements for the degree of Master of Arts, Wright State University 2008; see also: **Groeneveld, Richard F.**, *Arrest Discretion of Police Officers, The Impact of Varying Organizational Structures*, LFB Scholarly Publishing LLC 2005, ISBN 1-59332-125-2.

⁹⁰ Groeneveld, Richard F., *Arrest Discretion of Police Officers, The Impact of varying Organizational Structures*, LFB Scholarly Publishing 2005, ISBN 1-59332-125-2. bureaucratic-paramilitary p55 .

⁹¹ *Id.*

period had expired. Brown found that it was an "error in judgment" to have allowed this to happen)⁹².

- Several individuals who were instrumental in reporting and reviewing mismanagement of the pension and insurance plans were treated very unfairly and recommends public recognition of their important contributions:
 - Chief Superintendent Macaulay brought Ms. Revine's findings to Commissioner Zaccardelli and was immediately – and unacceptably – punished by being transferred out of Headquarters. Even after the transfer, Macaulay continued to push for transparency and resolution of the issues identified. Macaulay has since been transferred back to Headquarters. Brown recommends that a formal notation of commendation be attached to Macaulay's file and that the RCMP should publicly recognize his contributions – including by ensuring that he continues to enjoy the career he deserves.⁹³
 - Staff Sergeant Frizzell worked on the criminal investigation under the difficult circumstances of having no independence from the RCMP to do his job. This included the RCMP ordering him to cease his investigation. The inquiry determined that a formal notation of commendation be attached to Frizzell's file and that the RCMP publicly recognize his contribution.⁹⁴

The *Matter of Trust* inquiry called for an urgent and immediate Task Force on Governance and Cultural Change for the RCMP that would develop an appropriate governance structure and culture for the organization. This recommendation is based, in part, on the findings that:

- The current "paramilitary" chain-of-command governance model at the RCMP does not fit with a \$3 billion organization.⁹⁵
- The RCMP's Code of Conduct is counter to a solid workplace disclosure policy and contains no protection for a whistleblower, and in fact can be used as a weapon in a war of personalities.⁹⁶

Brown found that former Commissioner Zaccardelli's "*autocratic*" leadership style set a "*tone at the top*" that encouraged similar management styles among his management team. This was fundamentally damaging to the culture of the RCMP.⁹⁷

As Peter Villiers in chapter 1 of *Philosophy, Doctrine and Leadership: Some Core Beliefs* states:

On the other hand, we believe there to be a fundamental lack of inner confidence in many police leaders, which manifests itself in ways such as the following:

...

Autocracy. Some chief officers confuse the ability to be decisive and to project vigor and confidence, with autocracy. The confidence achieved from autocratic leadership is a false one. It can lead to disastrous results, both for the organization and the individual concerned,

⁹² A MATTER OF TRUST, Report of the Independent Investigator into Matters Relating to RCMP Pension and Insurance Plans, pages 22-23, <http://www.publicsafety.gc.ca/rcmppension-retraitegrc/fl/report-en.pdf>

⁹³ *Id.* p. 27.

⁹⁴ *Id.* p. 28-29.

⁹⁵ *Id.* p. 40.

⁹⁶ *Id.* p. 46.

⁹⁷ *Id.* p. 41, 42.

or more likely his or her hapless subordinates, who were unable to tell the chief in question that the initiative was not working. It is perhaps most simply described as an inability to listen; and listening too much is a very rare fault....⁹⁸

With regards to Commissioner William Elliott, who was appointed Commissioner following the departure of Commissioner Zaccardelli, senior officers, including Deputy Commissioners who reported to him, complained about his behavior⁹⁹. The Canadian Press reported that RCMP Commissioner William Elliott was accused of bullying behavior in complaints made by some deputy and assistant commissioners.

The timing of the blow-up in the top ranks is curious. Elliott's handpicked senior deputy, William Sweeney, retired July 1. His replacement, Rod Knecht, was not due to take up his job for another couple of weeks. Sweeney, said Senator Colin Kenny, was a "bit of a buffer" for the uniformed ranks when it came to Elliott. He said the eruption of frustrations now "is very much a cumulative sort of thing." Kenny, as past chair of a senate committee that studied and reported on the RCMP, disputed any suggestion the senior officers so far linked to the complaints are resistant to reforms. If anything, Kenny said, most of those he knows in the senior ranks would like to see change — especially more funding, more hiring, and more independence for the force — come faster than the government has been prepared to allow.¹⁰⁰

As the authors Ryan and Oestreich also point out:

Requiring that people be 100% polite, be constructive, and have solutions- not just problems- is a great way to narrow the number of individuals who will ever come to see you. Such expectations will almost guarantee that when somebody does show up, that the person will be angry, frustrated, and outspoken, or, at the other end of the spectrum, will be indirect.¹⁰¹

In terms of expressing frustrations, the recent decision of *Doré v. Barreau du Québec*, 2012 SCC 12 (CanLII), in which the Supreme Court of Canada addressed the appropriateness of lawyers expressing their frustrations with judges, strikes an interesting balance. The issue was whether a lawyer in Quebec had overstepped the reasonable expectations of the public to have their interests fully represented. Mrs. Justice Abella held that:

⁹⁸ **Adlam, Robert & Villiers, Peter** (editors), *Police Leadership in the Twenty-First Century, Philosophy, Doctrine and Developments*, Waterside Press 2003, ISBN 1 872 870 24 4.

⁹⁹ <http://www.cbc.ca/news/canada/story/2010/07/26/rcmp-commissioner-complaints.html>; see also: *Revolt in senior ranks spurs probe of RCMP chief*, Published On Tue Jul 27 2010

<http://www.thestar.com/news/canada/article/840930--revolt-in-senior-ranks-spurs-probe-of-rcmp-chief>

¹⁰⁰ **MacCharles, Tonda**, Ottawa Bureau, Darryl Dyck/The Canadian Press, *Revolt in senior ranks spurs probe of RCMP chief*, July 27, 2010:

<http://www.thestar.com/news/canada/article/840930--revolt-in-senior-ranks-spurs-probe-of-rcmp-chief>; see also: *RCMP head Elliott should come clean on Carson clearance, avoid tainting ongoing investigation*: Holland: <http://aptn.ca/pages/news/2011/04/06/rcmp-head-elliott-should-come-clean-on-carson-clearance-avoid-tainting-ongoing-investigation-holland/>.

¹⁰¹ **Ryan, Kathleen D. & Oestreich, Daniel K.**, *Driving Fear Out of Workplace, How to Overcome the Invisible barriers to Quality, Productivity, and Innovation*, Jossey-Bass Publishers 1991, ISBN 1-55542-317-5, p. 155:

[68] Lawyers potentially face criticisms and pressures on a daily basis. They are expected by the public, on whose behalf they serve, to endure them with civility and dignity. This is not always easy where the lawyer feels he or she has been unfairly provoked, as in this case. But it is precisely when a lawyer's equilibrium is unduly tested that he or she is particularly called upon to behave with transcendent civility. On the other hand, lawyers should not be expected to behave like verbal eunuchs. They not only have a right to speak their minds freely, they arguably have a duty to do so. But they are constrained by their profession to do so with dignified restraint.

[69] A reprimand for a lawyer does not automatically flow from criticizing a judge or the judicial system. As discussed, such criticism, even when it is expressed robustly, can be constructive. However in the context of disciplinary hearings, such criticism will be measured against the public's reasonable expectations of a lawyer's professionalism. As the Disciplinary Council found, Mr. Doré's letter was outside those expectations. His displeasure with Justice Boilard was justifiable, but the extent of the response was not.¹⁰²

Unfortunately, the recent history of the leadership of at least two RCMP Commissioners has given the impression in certain quarters that those who had the courage to stand up for what was right had to pay the price of leaving the organization after long, highly respected careers. The impact of this situation on any attempts to build a healthier workplace culture in the RCMP should not be underestimated.

¹⁰² *Doré v. Barreau du Québec*, 2012 SCC 12 (CanLII).

1.3 Culture

“No written law has ever been more binding than unwritten custom supported by popular opinion.”¹⁰³

In formulating its recommendation as to a practical and viable mandate for the Council, this Inquiry was to take into account the culture of the RCMP. The following aspects of the RCMP culture are mentioned in order to facilitate understanding of some of the possible roots of workplace issues.

Gareth Morgan¹⁰⁴ uses metaphors to facilitate visualizing that organizations are cultures and can thus be understood through the ideas, values, norms, rituals, beliefs and presumptions that maintain a socially-constructed reality.

Each culture, be it national, local or a sub-culture, has its own characteristics, including its beliefs, assumptions, values, principles, history and practices regarding the division of power among its members. It may be affected by the nature of the work to be undertaken or by the myths, education, training or attitudes of its membership. The manner and basis for rewards, promotions, discipline and recognition may also play an important role.

Cultures often have their own folklore, language, jargon, expressions and the shared common meanings attributed to past events which can serve as reinforcement of their bonds and common perspectives.

Much has been written about the culture of policing generally. Words, however, often fail to convey to an individual who has not experienced that culture the consequences, both positive and negative, as to the role it can play in one's life.

Several reports and inquiries in recent years have attempted to describe and provide insight into the unique and well-established culture of the RCMP. For those who have dared to attempt to change the culture of the RCMP, through the alignment initiative within the RCMP in the late 90s or other attempts, the term “bending granite”¹⁰⁵ has been used.

¹⁰³ C. C. Catt , at Senate hearings on Women's suffrage, Carruth, G. & Ehrlich, E. (Eds.) (1988), The Harper Book of American Quotations. New-York-Harper.

¹⁰⁴ Morgan, Gareth , *Images of Organization*, Sage, 1986, ISBN 0-8039-2830-0, chapter 5.

¹⁰⁵ Guyot, Dorothy, *Bending Granite : Attempts to Change the Rank Structure of American Police Departments*, Journal of Police Science and Administration, 1979, Volume 7, No 3.

It is interesting to note that Gary Edward Reed had, thirty years ago in *Organizational Change in the Royal Canadian Mounted Police*¹⁰⁶, enumerated numerous findings and conclusions similar to those in the Task Force Report¹⁰⁷.

The cultural bonds that hold the frontline police together have evolved over a long period. This is explained to some extent by the common experience of work that police do. Another explanation with merit is that police in action have no one to call when they are in a difficult situation other than a fellow peace officer. They must trust each other. Other public social services at least in some cases, have the alternative to call the police.

Police work is often described as the social system of final resort. Such work often requires handling the breakdowns or failures of the problems left unresolved by other social institutions or systems. They include: family or domestic violence or spousal relations gone wrong; delinquency; psychiatric or psychological or other medical afflictions that have not been effectively dealt with by the medical establishment; political demonstrations expressing dissatisfaction with a government decision or policy; labour conflict or workplace violence; child or elderly abuse; and escapees from prisons or correction facilities.

These police duties often require an ability to undertake triage similar to an emergency in a hospital when several cases arrive at the same time, each requiring a grasp of the cause based on the behavioral symptoms, prioritization of a given request for assistance or the referral of the situation to other colleagues with relevant expertise.

Police work also can involve wrongdoers attempting to manipulate the police, and vice versa. This often makes police cynical and skeptical of others' motivations, sometimes including their superiors' or politicians'.

Of all of the many different components that support the present culture and affect the way individuals within the organization interact and learn, we refer to the research paper¹⁰⁸ by Murphy and McKenna which has captured significant factors affecting the RCMP sub-culture¹⁰⁹. There are also most informative publications available for reference on the subject of police culture generally.¹¹⁰

¹⁰⁶ **Reed, Gary Edward**, *Organizational Change in the Royal Canadian Mounted Police*, Unpublished Thesis, 1982.

¹⁰⁷ *Rebuilding the Trust Task Force on Governance and Cultural Change in the RCMP*, December 14th, 2007 submitted to the Minister of Public Safety and President of the Treasury Board.

¹⁰⁸ **Murphy, Christopher & McKenna, Paul**, *Rethinking Police Governance, Culture & Management*, Draft Final: December 3, 2007, chapter 4, Towards a New Paradigm of Police Management & Culture,

¹⁰⁹ *Rebuilding the Trust Task Force on Governance and Cultural Change in the RCMP*, December 14th, 2007 submitted to the Minister of Public Safety and President of the Treasury Board Numerous books review the subject of police culture.

¹¹⁰ **O'Neill, Megan & Marks, Monique & Singh, Anne-Marie** (editors), *Police occupational Culture: New Debates and Directions, Sociology of Crime, law and Deviance, Volume 8*, Elsevier 2007, ISBN 978-0-7623-1307-5.

The author Edward T. Hall, referring to national cultures, cautions against thinking it is possible to entirely grasp what a culture is. Whether it is understanding the meaning behind a sub-culture's expressions or the stories that most of the members transfer from generation to generation, the subject of culture is elusive. He explains how a culture is an integrated whole, difficult to describe and how one goes about learning within it.

The author explains that language is only one ingredient in a culture and it can be understood rationally. A culture however also has as much emotional content, unquestioned assumptions, beliefs and myths as it does rationalities.

People do not learn a culture by combining parts which are memorized according to rules which they must think about in the course of a given transaction. The process would be too slow and too complex. People, he suggests, learn in gestalts – complete units – which are contracted in situations and can be recalled as wholes.

Each culture is not only an integrated whole but has its own rules for learning. These are reinforced by different patterns of over-all organization. An important part of understanding a different culture is learning how things are organized and how one goes about learning them in that culture. This is not possible if one persists in using the learning models handed down in one's own culture¹¹¹.

People often are not conscious that they learned their culture or sub-culture over prolonged exposure. They do so in multiple social relations and it forms during a fluid, life-long body of experience without any structure. There is no source with an express articulation of the contents of the whole of a culture. A language may be learned in a few years but to learn an entrenched culture can take several decades.

Does the RCMP culture attract the individuals with the character, competencies and the ability to learn compared to other professions competing for this range of candidates with higher qualifications for the specialized units requiring post-secondary education?

How is the RCMP culture, with its level of discretion, potential for self-development, social status, compensation and room for creativity and innovation perceived or viewed by recent university graduates?

Does the RCMP project an image in its advertising and publicity materials that puts more of an emphasis on the paramilitary aspects of membership in the Force, or on the independent role officers have as the holder of a public office with substantial powers that are limited only by the tests of reasonable exercise enunciated by common law?

¹¹¹ Hall, Edward T., *Beyond Culture*, Anchor Books 1976, ISBN 0-385-12474-0.: pages 130-131.

1.3.1 Knowledge

The nature of the basic knowledge required to be an effective frontline RCMP police officer is an important and distinctive characteristic of their culture.

Police obtain many of their beliefs about the world through confronting practical situations, using all of their heightened senses and including the survival instinct. They hold their beliefs based on the often intense, emotionally charged, unforeseeable and unique situations in which they learn. The types of experience usually involved in management or consulting tend to be acquired through abstract reasoning involving reflective, distant, and removed relationships where the types of response are less immediate and likely more foreseeable. This usually allows for a more pondered and objective experience.

The best detectives have been described as “living encyclopedias” of criminal cases and behavior¹¹². However, this knowledge or mental skill for examining behaviors can be easily used in assessing and evaluating superior officers. This type of analysis, when multiplied by the number of police working in the RCMP, is a formidable source of scrutiny upon the leadership of the RCMP and sets a high standard for exemplary behavior for any senior officer demanding the same.

This type of “practical- tacit” police knowledge is learned through experience, practice and the continued exercise of these abilities. It could be thought of as a unique sense and skill set for doing certain things. This form of intelligence is often only available to and understood by others who have spent the years of police work to acquire it. This type of knowledge that police rely on every day and enables them to size up the multiple and different situations they face and to respond effectively is often hard-earned and not understood by those outside the culture.

The nature of the skills acquired through police work emphasizes intuition, preparing options for handling dangerous situations, profiling individuals who are a source of danger, researching their modus-operandi, evaluating levels of honesty and sincerity, high awareness of attempts to manipulate, and investigating and using deductive reasoning to attempt to discover the manner to apprehend a criminal.

While there are rules of thumb which can be learned, a successful resolution to a given situation will be based on the police officer’s ability to respond appropriately, often on short notice. Put

¹¹² **Turvey, Brent E.**, *Criminal Profiling, An Introduction to Behavioral Evidence Analysis, Third Edition*, Academic Press 2008, ISBN 978-0-12-374100-4, p. 311.

another way, “*half the battle is knowing which rules of thumb to apply, in which order, and when to throw the book away and improvise.*”¹¹³

This skill set “illustrates a rudimentary kind of knowledge that can be acquired only by practice and that all but defies being communicated in written or oral form apart from the actual practice.”¹¹⁴

Other types of work require this practical-tacit knowledge, but certain types of work require far more. Most of these other types of work, however, do not require it to the same the degree as policing, nor do they require that the workers put their own safety at risk or that they execute their work in the time frames of the police. One example of a field requiring this practical-tacit knowledge is that of doctors working in emergency departments who, in addition to their academic knowledge and competencies, must make decisions and execute their work often within limited time delays. They do not, however, usually have to place their own safety at risk.

It differs from “express knowledge” which is available to others through writings, films, images or other digital forms. The practical-tacit knowledge learned through experience, which is the basis for successful investigations, must increasingly be complemented with a minimum or basic amount of specialized knowledge in various fields, including law and accounting.

For much of the RCMP’s history, recruits had to have a secondary education and demonstrated integrity and be capable of being trained in practical skills and passing the physical requirements. They did not have to establish their capacity for intellectual discipline so as to be able to absorb the types of abstract or conceptual knowledge that is now increasingly required for management and policy functions as well as for frontline duties due to the rapidly evolving case law interpreting the Charter. This up-to-date legal knowledge is applicable when police exercise their duties as office holders. The more specialized units of the RCMP, such as the Integrated Market Enforcement Team (IMET) increasingly require knowledge of accounting, finance, banking and the laws of other jurisdictions.

In referring to the capacity of frontline employees who are immersed in the day-to-day details of work, Nonaka and Takeuchi describe their potential for innovation when they are given freedom and resources. Specifically, they refer to the amount of highly practical information that the workers may find difficult to turn into an express form of knowledge accessible to others.

Sometimes this occurs because frontline workers’ reading or understanding of the opportunities for their ideas in the marketplace can be vague. Frontline personnel are often so caught up with

¹¹³ **Scott, James C.**, *Seeing Like a State, How Certain Schemes to Improve the Human Condition Have Failed*, Yale University Press 1998, ISBN 978-0-300-07815-2, p. 314.

¹¹⁴ *Id.* p. 315.

the focus of their duties that they fail to see the broader picture and the relevance of their insights. As Nonaka and Takeuchi write:

The major job of managers is to direct this confusion toward purposeful knowledge creation. Both senior and middle managers do this by providing employees with a conceptual framework that helps them make sense of their own experience. Senior managers provide a sense of direction by creating grand concepts that identify the common features linking seemingly disparate activities or business into a coherent whole.¹¹⁵

Express knowledge is referred to as scientific or more abstract types of knowledge, which professionals must demonstrate in fields such as medicine, law, engineering, psychology and accounting in order to be admitted to their profession. All too often, professionals who are comfortable within the intellectual framework of their profession, its concepts and its technical terminology fail to grasp or understand the frustrations of those who work in a field where the basic judgment-making does not take place in the comforts of a specialized area of knowledge.

As Langdon Winner eloquently explains:

The point of the matter is that our conception of what it means to know anything at all has shifted in the direction of fragmentation and specialization. Taking the simple meaning of “complex,” i.e., “composed of many parts with many interrelationships”, we notice that only the first half of the definition has attracted our activity. We are truly obsessed with the parts while ignoring the relationships between them. Specialized disciplines ride herd on segments of reality and study them in meticulous detail. To know means “to know a small part well”. In the modern university highly refined segments of knowledge exist in virtual isolation with little energy expended to discover whether or not the segments are relevant to each other....it might be said that we have now obtained knowledge at the cost of understanding.¹¹⁶

The place of police in the social hierarchy came about to some extent because they were seen as requiring a rigid paramilitary and bureaucratic process to enable them to complete their duties. They were organized on the basis of needing to be supervised by multiple levels of ranks and told what to do to. Police have traditionally not been treated as professionals who had been examined and found to possess the required knowledge in a defined area of knowledge or subject matter. The courses that RCMP members receive at the Depot more closely resembles training as opposed to the education a professional is obliged to complete.

When one examines the legal framework in which police officers exercise their office holder duties and the type of legal knowledge they must have access to in this independent and non-subordinate role, it can be validly questioned as to whether the RCMP could provide more of a

¹¹⁵ **Nonaka, Ikujiro & Takeuchi, Hirotaka**, *The Knowledge Creating Company, How Japanese Companies Create Dynamics of Innovation*, Oxford University Press, 1995, ISBN 0-19-509269-4, p. 15.

¹¹⁶ **Winner, Langdon**, Chapter 2, *Complexity and the Limits of Human Understanding*, in **La Porte, Todd** (editor), *Organized Social Complexity, Challenge to Politics and Policy*, Princeton University Press 1975, p.46

professional structure and foster collegial relationships to support the office-holder aspects and independent nature of members' duties.

Through its rank system, the organization of the RCMP emphasizes the subordinate role of members and does not foster the image of individual members as being self-directed and requiring ingenuity, imagination and a mastery of multiple related academic subjects.

Another aspect of police culture that has a long history is the way police were often looked upon with disdain by prosecutors, defense lawyers and judges in the criminal justice system. While often having received better formal education than the police, rather than appreciating the importance of police work, the more educated part of the criminal justice system sometimes compare the police to their standard of education. The professionals often looked upon themselves as "independent" individuals while the police were looked upon as uniformed "subordinates" and as a collectivity. This and other factors resulted in fostering distrust of the professions by the police.

Because so much of what police believe has been learned through all of their senses, often in unique, emotionally charged situations, it can be difficult for others to understand the often traumatic situations police face who are not themselves police officers.

Unlike the decisions of many of other institutions, including the courts, police do not often have significant amounts of time to reflect, research, and seek assistance before acting. They must decide and act. Their on-the-spot decisions, possibly with their own and other people's safety on the line and often working alone at night, become a subject for second guessing.

Police behavior or actions are often subject to the evaluation or criticisms of others who were not necessarily present, nor capable of feeling or understanding the unique context, circumstances or the interaction of the personalities involved. Legislators, civil liberties associations or the media, with the benefit of hindsight and often substantial time to consult, reflect, ponder, then speculate as to how the peace officer should have acted. Unfortunately, they are often so far removed from the facts that it is difficult for them to be objective.

However, their critics continue to pontificate in the comfort of their offices, often publicly with neither hesitation nor understanding about the complete situation facing a peace officer. Often they cannot imagine nor understand the limitations of making split second decisions that police are sometimes be called upon to make.

A common assumption within the RCMP culture is the ill-informed nature of much of the criticism of police behavior during emergencies. The sources are often lawyers, judges, psychologists or media pundits. Police often refer to these individuals as "back-seat drivers". They often lack a full view of the context and have little experience placing their own safety in harm's way for the benefit of others.

The critics are not regularly called upon to put their own safety at risk. They do not have to back up their decisions with the use of their own physical abilities nor are they expected to use lethal force if required.

More often than not, reports in the media about the behavior of police are rendered without a deep appreciation of the immediate action required in the complex situation the police confronted on behalf of the safety of the public.

These attitudes can encourage the police to adopt a response of “if they don’t care about me, I don’t care about them” or an “us vs. them” mentality. Unfortunately, this often leads police culture to feel more isolated from the rest of society.

Serious questions remain as to the education and competencies that are required by police relative to their exercise of a public office.

Regarding the different skill sets and educational background required of recruits for the RCMP, Murphy and McKenna write:

The RCMP mandate indicates they have several, arguably distinct, policing or businesses lines such as: urban policing, rural policing, federal policing, aboriginal policing, security policing, international policing, border policing, etc. These different types of policing require distinctive skills sets, job requirements, career paths, training and educational backgrounds. Unfortunately the limited generic “one size fits all” organizational model the RCMP uses to organize, recruit, train and manage these varied policing functions and activities appears to not be working. It may be worth exploring new ways of organizing and managing these different kinds of police work and treating them more as distinct policing entities, but under the general umbrella of the RCMP. These different policing functions would have their own distinct recruiting, training, specialization, career models. Members would have more specialized police careers and could be advanced within their chosen policing area of expertise, without having to leave in order to be promoted. The result might be a significantly reorganized but potentially more efficient, effective and manageable policing and security organization.¹¹⁷

The abstract and intellectual reasoning often required in law must not only be mastered but must be applied. Police must often diagnose the nature of the emergency they are confronted with and take action based on a split-second evaluation or assessment, sometimes placing their own safety at risk for the benefit of society. In addition, they must do so in conformity with the law, including the Charter.

¹¹⁷ **Murphy, Christopher & McKenna, Paul**, *Rethinking Police Governance, Culture & Management*, Draft Final: December 3, 2007, chapter 4, Towards a New Paradigm of Police Management & Culture, p. 65.

Justice Binnie reviewed the violation by police of interests protected by the Charter and concluded:

[133]Given that the police conduct in committing the Charter breach was neither deliberate nor egregious, we conclude that the effect of admitting the evidence would not greatly undermine public confidence in the rule of law. We add that the Court's decision in this case will be to render similar conduct less justifiable going forward. While police are not expected to engage in judicial reflection on conflicting precedents, they are rightly expected to know what the law is.¹¹⁸

The rationale of the court inevitably leads to the conclusion that police officers are expected to know the major non-conflicting precedents of the Supreme Court in matters of criminal law.

Richard F. Groeneveld in *Arrest Discretion of Police Officers* underlines the need for constant education:

Law enforcement executives have a fundamental responsibility in assuring that their police offices know how to properly execute the arrest process without violating the rights of community residents. This knowledge base comes from a versatile set of dimensions....Arrest issues are no less critical to policing that pertain top the use of deadly force....Laws, policies, and standards are related to arrest procedures are constantly in flux, thereby requiring constant reeducation and training in the practice of legal and ethical arrest decisions.¹¹⁹

The case law clearly demonstrates the necessity for police to apply the law while taking into account the unique circumstances and context at hand.

Not only are police required to know the law but their behavior and exercise of discretion will be examined with a microscope should they ever have to defend their actions before a court of law.

In *R. v. Grant*, Justice Binnie held that:

[32] The objective nature of this inquiry recognizes that the police must be able to know when a detention occurs, in order to allow them to fulfill their attendant obligations under the Charter and afford the individual its added protections. However, the subjective intentions of the police are not determinative. (Questions such as police "good faith" may become relevant when the test for exclusion of evidence under s. 24(2) is applied, in cases where a Charter breach is found.) While the test is objective, the individual's particular circumstances and perceptions at the time may be relevant in assessing the reasonableness of any perceived power imbalance between the individual

¹¹⁸ *R. v. Grant*, 2009 SCC 32, [2009] 2 SCR 353. [Emphasis added].

¹¹⁹ **Groeneveld, Richard F.**, *Arrest Discretion of Police Officers, The Impact of Varying Organizational Structures*, LFB Scholarly Publishing LLC 2005, ISBN 1-59332-125-2, p. 139.

and the police, and thus the reasonableness of any perception that he or she had no choice but to comply with the police directive.¹²⁰

In *Ontario (Attorney General) v. Fraser*, Chief Justice McLachlin and Justice LeBel, writing for the majority, held that:

[72] In fact, many of the rights in ss. 7 to 12 do not entitle individuals to any form of state action. Rather these provisions guarantee a mixture of negative and positive rights. For instance, s. 9 protects “the right not to be arbitrarily detained or imprisoned” and s. 12 protects “the right not to be subjected to any cruel and unusual treatment or punishment”. But s. 10 also protects a right to counsel and imposes a corresponding duty on police officers to facilitate the exercise of this right. See also *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 (CanLII), 2007 SCC 9, [2007] 1 S.C.R. 350, at para. 107, referring to “the s. 12 guarantee of freedom from cruel and unusual treatment” (emphasis added).

The knowledge that a peace officer requires of statutory laws and the common law relating to the exercise of their rights and obligations as holders of a public office is increasingly complex. Police are subject to the rule of law and are thus deemed to know the law and act accordingly.

This complexity of the law surrounding the exercise police discretion is exemplified in the decision of *R. v. Beaudry*, 2007 SCC 5, [2007] 1 SCR 190, in which the Supreme Court split 5 to 4 in favour of maintaining the conviction of a police officer for obstruction of justice for failing to administer a breathalyzer test to another police officer who he suspected was driving under the influence. The Supreme Court held that the police officer gave preferential treatment to another police officer whom the first officer had reasonable grounds to believe had been driving while intoxicated, and that this preferential treatment constituted obstruction of justice and was not a justifiable exercise of discretion.

Given the challenges of police work today and the necessity for self-directed learning that is required in order to stay abreast of the multiple fields of knowledge involved in policing, it is difficult to believe that the public can aspire to better policing without, at a minimum, sophisticated pre-hiring testing to confirm a candidate’s ability to absorb and master the types of knowledge that are called for, such as basic law, in addition to practical-tacit skills.

As authors Jeffrey Pfeffer and Gerald R. Salancik state:

In a climate of social values that stress participation and democracy, bureaucracies, with their centralized structures of authority and control, are anachronistic. With a more skilled and more

¹²⁰ *R. v. Grant*, 2009 SCC 32, [2009] 2 SCR 353.

educated workforce, with increasingly sophisticated technology, the prediction has been that professional, rather than bureaucratic, organizational forms would emerge. Power would be based on skill and knowledge, and consistent with the professional model, self-control or collegial control would be emphasized over control by the organizational hierarchy, unfettered by inappropriate strategies of motivation and rigid, dehumanizing structure, the new workers, educated and creative, would adjust their activities to the needs of the organization and realize their creative potential in the process.”¹²¹

During interviews, the Inquiry was informed, especially in the field of white-collar crime, that a higher proportion of individuals with specialized knowledge is required for self-directed, prolonged analysis of often dry financial material.

Rebuilding the Trust Task Force on Governance and Cultural Change in the RCMP, December 14th, 2007 submitted to the Minister of Public Safety and President of the Treasury Board recommended that a basic qualification requirement should be a university education to join the RCMP.

Rebuilding the Trust, 2007, **Recommendation 31 – Education Prerequisite**

The RCMP needs to demonstrate greater openness and willingness to accept lateral entry into the Force in order to provide needed specialized skill sets and experience. In the longer term, the Task Force believes that the RCMP should also make a post-secondary degree a condition for all new recruits.

The question of whether or not candidates for the RCMP must have, as a minimum requirement, a university degree for all career paths has yet not been decided. Few, however, would argue against the importance of structuring the workplace to be a catalyst for learning.

With regards to the attractiveness of the RCMP to better educated individuals seeking a stimulating career, one can question whether the image that the organization projects is optimal to succeed in this particular endeavour.

The nature of the agreement that to which RCMP members commit is unique in the policing profession in Canada. Individuals who join the RCMP are not hired, nor can they apply for a position in federal, provincial or municipal policing. Recently, however, there has been a program to hire a limited number of specialists for IMET operations.

¹²¹ **Pfeffer, Jeffrey and Salancik, Gerald R.**, *The External Control of Organizations, A Resource Dependence Perspective*, Harper & Row Publishers 1978, ISBN 0-06-045193-9, p. 281.

Rather, applicants have chosen to serve in an institution whose members can be assigned throughout a substantial number of geographic locations, to an unusually large number of duties and with multiple types of duties including frontline policing or specialized units.

Member's assignments are often far from the locations where they are socially connected or that they would have chosen by preference. In an age where often both spouses have careers and where reconstituted families are increasingly common, this can have important consequences on the quality and financial considerations of the lives of members and their family.

Each year, the RCMP receives thousands of applications; these numbers can be only expected to rise during a difficult economic period. What is not ascertained is what proportion of the more qualified candidates seeking police work is going to other police forces.

For instance, several interviewees questioned whether the interplay between bureaucratic processes and the different internal systems affecting compensation according to rank in the RCMP results in attracting the optimal candidates, whose qualifications would include academic credentials in accounting and finance, accepting to be paid as constables.

1.3.2 Learning

Most organizations have some degree of hierarchy whereby certain individuals exercise more power than others. What varies significantly in such roles includes what is the basis or requirement for granting the authority? Is it based on the individual's capacity to order what must be done or on the superior's ability to facilitate the subordinate learning what has to be done? Perhaps a combination of both. What are the expectations of those who are granted power in the RCMP as regards learning?

Christopher Murphy and Paul McKenna state:

To achieve the "common purpose" that is at the heart of the RCMP's integrated policing philosophy, there is an immediate opportunity to set in place succession, staffing, and learning investments at the pinnacle of the organizational structure. The "operationalization" of this philosophy may best begin at the top of the RCMP and continue to serve as a catalyst for transitional learning throughout the organization. By means of an internalization of the accepted characteristics of integrated policing, the RCMP can achieve higher functioning management through (RCMP 2006):

- Shared strategic priorities – devoting senior management to the achievement and embodiment of common goals through actions that exemplify substantial accountability;

- Free flow of intelligence – dedicating senior management to achieving collaborative approaches to decision-making;¹²²

The training a recruit receives tends to minimize their individual characteristics and emphasizes the organizational principles beliefs, values and cultural elements. Their common military-style uniform, in addition to representing other values, is a symbol of a command-and-control relationship. The need to fit in and to belong to this sub-culture and to adhere to its precepts is powerful. The influence of the sub-culture's deeply rooted assumptions, beliefs and often subconscious norms exercise substantial forces on members that are part of the Force.

For many members, joining the RCMP was their first regular employment and they have had no other previous full time work experience with which to compare its culture.

As most bi-cultural individuals know, to understand one's culture it is most useful to have the experience of another to provide a point of reference¹²³.

The all-important ability, the RCMP's capacity for learning, has been addressed by several reports. Christopher Murphy and Paul McKenna, in *Rethinking Police Governance, Culture & Management*, describe the critical importance of this fundamental individual capacity:

The speed with which technologies regenerate themselves and the ongoing challenge of "discontinuous" change within all spheres of human endeavor means that organizations may only thrive if their human resources are highly adept at learning how to learn (Nadler et al. 1995). The realm of policing is clearly not immune to this process of constant, transformative change.¹²⁴

Rebuilding the Trust Task Force on Governance and Cultural Change in the RCMP, December 14th, 2007 submitted to the Minister of Public Safety and President of the Treasury Board, contains the following recommendation:

Rebuilding the Trust, 2007, Recommendation 35 – Performance Evaluations

Effective immediately, all members and employees of the RCMP must receive annual performance evaluations. These should include not only what was achieved, but how it was accomplished. The

¹²² **Murphy, Christopher & McKenna, Paul**, *Rethinking Police Governance, Culture & Management* December 3, 2007 A Summary Review of the Literature Prepared for the Task Force on Governance and Cultural Change in the RCMP, Public Safety Canada, p. 57. [Emphasis added].

<http://www.publicsafety.gc.ca/rcmp-grc/fl/eng/rthnk-plc-eng.pdf>

¹²³ **Hall, Edward T.**, *The Silent Language, An anthropologist reveals how we communicate by our manner and behavior*, Doubleday & Company 1959, Library of Congress number: 59-6359. Specifically page 53

¹²⁴ **Christopher Murphy, Paul McKenna** *Rethinking Police Governance, Culture & Management* December 3, 2007 A Summary Review of the Literature Prepared for the Task Force on Governance and Cultural Change in the RCMP, Public Safety Canada, page 49 , <http://www.publicsafety.gc.ca/rcmp-grc/fl/eng/rthnk-plc-eng.pdf> [Emphasis added].

results of the performance evaluations should be used to identify opportunities for additional education and training, to identify future leaders and make promotion decisions.¹²⁵

It is the forensics laboratories of the RCMP which is predominantly composed of civilian members, where the quest to learn is often recognized as a highly evident characteristic. The learned personnel in the forensic laboratories are on an on-going basis considered one of the groups that uses the services of the Canadian Police College library regularly. One interviewee incisively asked why this learned subculture within policing had not had more influence on the rest of the RCMP culture.

What does it do to the member's confidence, self-esteem and personal development if an organization places too much emphasis on being rewarded for not making mistakes? What is required to encourage innovating and developing better or novel approaches to provide services, which ultimately involves at least some risk?

The Task Force Report of December 14th, 2007, concluded that for the RCMP to bring about successful change and reform would require a much higher degree of managerial competence and sophistication than that which was currently found within the RCMP:

The growing sophistication and complication of police processes will further require that police senior management will need to be able to, at minimum, be able to converse and comprehend the processes, products and practices of this new category of highly skilled, civilian knowledge worker. Without an ability to conceptualize the work that is being done on behalf of the organization by these knowledge workers, police leaders will not be in a position to re-present or articulate the benefits of this category of police effort to their civilian governing authorities, their funding agencies, or the public.¹²⁶

Given the knowledge of law, forensics and psychology required in modern-day policing, what has hindered the creation of a more learned police organization?

Which organizations besides the RCMP have broader centers of expertise in so many different areas of knowledge?

Could the RCMP reorganize learning in an integrated network manner? Could it make its multiple centers of expertise – psychologists, finance and accounting, technology and medicine – more accessible to the whole organization?

How could the organization integrate the learning and exposure to these fields so as to provide a more appropriate intellectual framework for the exercise of police duties?

¹²⁵ *Rebuilding the Trust Task Force on Governance and Cultural Change in the RCMP*, December 14th, 2007 submitted to the Minister of Public Safety and President of the Treasury Board

¹²⁶ *Id.* page 21.

This approach to encouraging the participation of frontline workers in adding to organizational knowledge is well explained in *The Knowledge Creating Company, How Japanese Companies Create Dynamics of Innovation* by Nonaka, Ikujiro & Takeuchi, Hirotaka¹²⁷.

1.3.3 Bureaucracy

There are sound reasons that justify bureaucratic structures, especially in the public sector and larger organizations. Ministers and government officials must be able to recall, understand and explain substantial amounts of complex information in unforeseeable circumstances. These may include Ministers answering questions in Parliament, public servants answering questions in Parliamentary Committees, or police officers testifying before the courts.

The level of rigid, bureaucratic demands for the recording and retention of information can easily overwhelm and detract from the core purpose of an organization. The issue is sometimes the degree to which the bureaucracy becomes so embedded in the culture that the larger goal of having a sound process is abandoned in favor of completing the process.

The beginning of wisdom in the analysis of the implementation of public policy lies in realizing that many decisions are a response not to the nature of the clientele, the demands of interests groups or even the intent of policy, but rather to internally generated bureaucratic pressures. This applies most forcibly to street-level bureaucrats in general, and to the police in particular.¹²⁸

This situation creates substantial stress upon the members and management of the RCMP who are goal-oriented. Getting things done can too often seem like an obstacle course, even, for instance, in simply obtaining the tools required for a particular project. Without even beginning the project, too much of the member's energies may have been spent on the individual processes for obtaining each tool or resource.

Christopher Murphy and Paul McKenna note:

The administrative burden imposed on the regular RCMP members – legal developments and technological developments – have seriously restricted the time available for frontline police work.

¹²⁷ **Nonaka, Ikujiro & Takeuchi, Hirotaka**, *The Knowledge Creating Company, How Japanese Companies Create Dynamics of Innovation*, Oxford University Press, 1995, ISBN 0-19-509269-4.

¹²⁸ **Groeneveld, Richard F.**, *Arrest Discretion of Police Officers, The Impact of varying Organizational Structures*, LFB Scholarly Publishing 2005, ISBN 1-59332-125-2., p. 65.

Legislative changes and court decisions led to a dramatic increase over the last 30 years in the complexity, formalization, police resources and time required to process routine investigations.¹²⁹

Members of the organization, over time, conform to a defensive approach of ensuring that no mistakes are made in the processes they must follow. They ensure that they have completed the process and there are no errors that can be attributed to them.

It is important to take into consideration that there are numerous bureaucratic processes that are required of members and that often hinder the flow of their work. Most professionals do their articling or practical training in non-bureaucratic structures where greater focus is placed on results, self-direction and accountability. Once qualified, they usually are provided administrative assistance that allows them to undertake the parts of the work that require the most know-how.

This restricted focus all too often leads to understanding what one can be blamed for, to the neglect of what can be accomplished. In terms of understanding the larger purpose of the organization in the RCMP, the members have not had significant experience in streamlining, modifying or improving the systems to reach the organization's goals.

Too often members remain in lower classifications within the RCMP for long periods where they are not encouraged to participate in adapting or modifying existing internal systems. When they are promoted to higher level classifications within the RCMP, they do not have the administrative skills or abilities to rethink, change, adapt, create or modify the internal systems of the organization.

Equally important is the often discontinuous nature of the leadership provided by the commissioned officers in the RCMP.

In their paper entitled: «*Rebâtir les ponts*», (Rebuilding the Bridges), the authors Robichaud, Benoit-Barné and Basque¹³⁰ examine, in the context of "C" Division in Quebec, the issue of the impact of such short duration postings of officers, which is often less than two years. According to the report, one reason given by management for justifying this practice is the need for officers to have a broad experience handling the diverse issues dealt with in various departments.

While it is traditional in bureaucratic organizations with routine operations such as the RCMP to have frequent short-term transfers of officers from department to department, the impact of these

¹²⁹ Christopher Murphy, Paul McKenna *Rethinking Police Governance, Culture & Management*, December 3, 2007 A Summary Review of the Literature Prepared for the Task Force on Governance and Cultural Change in the RCMP, Public Safety Canada, page 25, <http://www.publicsafety.gc.ca/rcmp-grc/fl/eng/rthnk-plc-eng.pdf>

¹³⁰ Daniel Robichaud, Chantal Benoit-Barné, Joelle Basque, *Rebâtir les ponts. Rapport de consultation des employés et dirigeants de la Gendarmerie royale du Canada – Division C.*, Groupe de recherche langage, organisation et gouvernance, Université de Montréal, 5 novembre 2008, www.mendeley.com/research/rebtir-les-ponts/ - États-Unis.

short postings can create the perception among members that they train the commissioned officers to prepare them for their next promotion. Unfortunately, the Inquiry was told by several interviewees that on occasion this has led to a promotional project to demonstrate a careerist's skills. This created an additional bureaucratic burden. The officer then moves on before the results are fully observed and being held accountable.

Do the commissioned officers have enough time to absorb the new context or exercise, test and apply their new-found knowledge in the group? Does the length of the postings for commissioned officers allow for evaluating the commissioned officers' ability to improve the deeper problems that may have failed to be addressed? Can the detachment or department benefit, given the short term of the officer's posting?

With respect to the role of leader's need to search the environment and build an organization's capacity to learn, Edgar Schein explains:

One of the critical roles of learning leadership, then, is first of all to notice changes in the environment and then to figure out what needs to be done to remain adaptive... Especially at the strategic level, the ability to see and acknowledge the full complexity of problems becomes critical. The ability to acknowledge complexity may also imply the willingness and emotional strength to admit uncertainty and to embrace experimentation and possible errors as the only way to learn.¹³¹

Howell S., Baum in *The Invisible Bureaucracy, The Unconscious in Organizational Problem Solving*, in using the example of an office planner and the administrator who is a superior, explains the dilemma for establishing good communication in a hierarchy:

Frequently, final decisions about agency positions on issues on which the planner has worked are made privately among agency administrators, out of the subordinate's view. No explanation may be offered for decisions, including those in which a particular planner's work is not fully accepted. If an explanation is given, it may cite general agency goals or concerns with no specific connection to a staff member's assignment. An administrator, in the explanation, may refer to information about external threats to or opportunities for the agency, which the specialized subordinate is unlikely to have or be able to challenge. A federal housing analyst concludes that she can never be certain what her superior makes of her work: "I like to think that she respects the work I do, but I don't know." These unresolved uncertainties add to the apparent arbitrariness of administrative actions... These examples illustrate the double bind described earlier. The relationship between the planner and an administrator is not simply one in which two persons reason together and seek to persuade one another about the most rational approach to issues. The administrator has control over whether the planner's recommendations are accepted and which conclusions are endorsed. At the same time, the exercise of this authority is virtually invisible, which confuses the issue of whether power is

¹³¹ Schein, Edgar H., *Organizational Culture and Leadership*, Second Edition, Jossey-Bass Publishers, 1992, ISBN 0-7879-0362-0, p. 382-83.

exercised.¹³²

It would not appear, however, that the policy takes into account how the subordinates in the department who share their knowledge of that department with the officer during his short participation in the department might feel after the officer moves on.

The authors from the Groupe de recherche langage, organisation et gouvernance of Université de Montréal offer the metaphor of the short-term postings being viewed by members as a stepping-stone for commissioned officers, and suggest the view that many believe it to be an outdated concept. The authors posit as to the value of the experience acquired by the multiplication of such short-term experiences. They question its contribution to the development of a leader and the benefit for the whole organization.

Pursuant to this train of thought, one can ask whether this type of short-term experience for the commissioned officer in many of the RCMP detachments and departments provides them the time and opportunity to make a substantial contribution following their acquisition of new knowledge. It is to be remembered that there are five non-commissioned ranks and six commissioned ranks, including the Commissioner. Each new rank brings responsibilities and rewards. The latter can be substantial with respect to pensions.

Rebuilding the Trust, 2007, **Recommendation 34 – Leadership Competency**

The RCMP should ensure that specific and detailed competency profiles are in place for all senior leadership positions and are current and reflect modern policing responsibilities.

The authors from the Université de Montréal submit that that:

- Officers often have difficulty furnishing the reasons and considerations behind their decisions.
- The promotional system according to some members hinders their relationships with officers as they have personal agendas to be promoted to higher levels and this hinders honest conversations.

Jeremy Rifkin in his book *The Age of Access, The New Culture of Hypercapitalism where all of Life is a Paid-for Experience* writes that:

Formal hierarchies, with clear divisions of authority, allow information to flow up the chain of command and decision making to flow down the line with a minimum of disruptions. Hierarchical organizations work best in periods of steady and stable markets but are woefully inadequate in periods of flux. Their administrative procedures are far too rigid to adjust to rapid changes in market conditions. Networks, on the other hand, are far more flexible and better suited to the

¹³² **Baum, Howell S.**, *The Invisible Bureaucracy, The Unconscious in Organizational Problem Solving*, Oxford University Press 1987, ISBN 0-19-503961-0, p. 69

volatile nature of the new global economy. Cooperation and team approaches to problem-solving allow the partners to respond more quickly to changes in the external environment. While the players give up a degree of autonomy and sovereignty, the spontaneity and creativity that flow from network-based collaboration give them a collective edge in the new, more demanding high-tech economy. Because networks involve complex channels of communications, diverse perspectives, parallel processing of information, continuous feedback, and reward thinking “outside the box” the players are more likely to make new connections, generate new ideas, and create new scenarios, and implement new actions plans in what is becoming a hyper commercial environment.¹³³

As the authors Jeffrey Pfeffer and Gerald R. Salancik explain:

OD [organizational development] writers tend to believe that the linkage among the elements in most organizational environments are becoming more numerous and more complex, that the rate of change in an environmental condition is increasing, and that traditional bureaucratic structures are becoming less and less adequate. It is argued that new and more adaptive structures and processes are required and that these in turn demand new levels of interpersonal skills and awareness which OD can best provide.”¹³⁴

In *A General Theory of Bureaucracy*, Elliott Jacques writes:

Collective bargaining, established in the nineteenth century to overcome and prevent gross abuses of employees by employers, can also become a dominant source of disequilibrium once a society has become wholly industrialized. To the powerful go the rewards. Anyone employed in the intermediate zone comes readily to appreciate the situation. Most groups accordingly attempt to use coercive power to enhance their differential position. Those who do not do so get left behind in the economic struggle. The outcome is that the general level of wages and salaries keeps being pushed up by power bargaining. A chronic inflationary leap-frogging is kept in motion without anyone’s necessarily being sure of gaining in the end... Those phenomena are painfully familiar. The inadequacy of conceptualization of work and reward of work, and the anti-requisite nature of the bargaining procedures for determining rewards, have brought about the most obvious and manifest symptoms of social unrest. The institutions mediating payment demand the expression of the most negative qualities of greed, devil-take-the-hindmost, envy, rivalry and dissembling. A constructive concern for the welfare of others or of the nation cannot be expressed without utterly undermining the power of bargaining position.”¹³⁵

¹³³ **Rifkin, Jeremy**, *The Age of Access, The New Culture of Hypercapitalism where all of Life is a Paid-for Experience*, Jeremy P. Tarcher/Putnam 2000, ISBN 1-58542-018-2, p. 23.

¹³⁴ **Pfeffer, Jeffrey & Salancik, Gerald R.**, *The External Control of Organizations, A Resource Dependence Perspective*, Harper & Row Publishers 1978, ISBN 0-06-045193-9. The authors at page 282, citing **R. E. Miles**, *Organizational Development*, **G. Strauss, R. E. Miles, C. C. Snow, and A. S. Tannenbaum** (eds.), *Organizational Behavior: Research and Issues*, 165-191, New-York: Industrial relations Research Association, specifically at pages 170-171.

¹³⁵ **Jacques, Elliott** *A General Theory of Bureaucracy*, Halsted Press, first published 1976, reprint 1977, ISBN 0-470-15097-1., p. 224-225:

Unfortunately, a bureaucratic organization has been described as being unable to “correct its behavior by learning from its errors”¹³⁶.

1.3.4 The Paramilitary Rank Structure

Much of policing on the frontline involves a member of the RCMP working alone or in a collegial manner.

Police paramilitary activities are relatively infrequent in Canada. These would include large police operations in the demonstrations such as the student’s protests in the province of Quebec in the summer of 2012 (the longest running continuous protests in Canadian history), the G-8 / G-20 meeting in Ontario on June 26 and 27, 2010 (the largest police security operation in Canadian history), the Summit of the Americas in Quebec City, in April 2001, the Francophone Summit in Moncton, New Brunswick, in September 1999 as well as the November 24-25, 1997 APEC meeting in British Columbia. Paramilitary responses are also required for events such as the October Crisis, the Manitoba and the Saguenay floods, and the Ice Storm in Eastern Canada.

Due to the media coverage these events receive, the impression can be left that they occur regularly. Yet paramilitary operations do not make up most of the work the RCMP members are required to undertake. On the contrary, much of front-line policing involves members spending their work days being self-managed.

When one examines the nature of frontline policing, one finds that it requires a broad range of human qualities, including judgment, capacity to diagnose the type of issue involved in a situation, the ability to triage the priorities between simultaneous demands for attention, the ability to assess the level of danger, interpersonal skills and the ability to be perceived as acting fairly by different members of the public.

Three decades ago, Gary Reed referred to the MacDonald Commission which rejected the notion of leadership based on giving orders:

advocates of this approach to leadership ignore an increasingly important aspect of modern organizations: they are complex and their parts are highly interdependent....a leadership style based on giving orders must give way to a team approach where the emphasis is on shared decision-making, and where control by superiors is largely replaced by self-control and self-direction, based on a common understanding of shared goals.¹³⁷

¹³⁶ **Michel Crozier’s** definition of bureaucracy in *The Bureaucratic Phenomenon*, The University of Chicago Press 1964, p. 187.

¹³⁷ **Reed, Gary Edward**, *Organizational Change in the Royal Canadian Mounted Police*, Unpublished Thesis 1982.

The 2007 Inquiry Relating to RCMP Pension and Insurance Plans, undertaken by David A. Brown, discussed the current "paramilitary model" chain-of-command governance model at the RCMP in the following terms: "I am confident in saying that this is not a governance model that investors in a \$3 billion business would accept".¹³⁸

In her classic article "Bending Granite: Attempts to Change the Rank Structure", Dorothy Guyot highlights five sets of management problems:

1. Lack of Management Flexibility:

- A. Top managers must be drawn from a very small pool, and managerial ability is not the main criterion for membership in the pool. As Herman Goldstein has commented "indeed, if one were set out to design a system to prevent and discourage the police from developing their own leadership capability, it would be difficult to come up with a surefire scheme than that which currently exists".
- B. Individuals with skills to match the department's needs are routinely hired only at the police officer rank and are occasionally hired at the chief rank. All other hiring must be of civilians outside the rank system.
- C. The greater number of ranks, the less flexibility management has in allocating personnel to positions, since positions are open only to members of a single rank.
- D. Cumbersome procedures hamper any movement of personnel between positions which are designated for different ranks.
- E. The greater proportion of personnel at the rank of lieutenant or above, the smaller the proportion engaged in the direct delivery of service.

2. Lack of incentives within Rank of police officers:

- A. The rank structure attaches least authority, pay and prestige to the police officer rank. However, the recognition that police officers on the street make important discretionary judgments in the normal course of their work makes clear the need to attract and retain talent in those street positions.
- B. Street positions are filled preponderantly by personnel of police officer rank, with rapidly decreasing proportions as rank increases.
- C. The greater the percentage of personnel above the rank of police officer, the less likely it is that capable individuals remain at the rank of police officer.
- D. Within the rank of police officer, pay differentials are small, based primarily upon years of service, rarely upon assignments or special skills and almost never upon performance.
- E. The fewer civilians employed, the more routine work must be performed by police officers.
- F. Authority based on rank makes personnel at the police officer rank subordinate to the authority of every individual of a higher rank, however irrelevant the ranking officer's

¹³⁸ **Brown, David A.**, *A Matter of Trust*, Report of the Independent Investigator into RCMP Pension and Insurance Matters, June 15, 2007.

position is to the police officer's position and however much the police officer has the edge and expertise.

3. Militarism:

- A. Within a department, the military flavor of the rank structure provides those of the lower rank with a ready excuse for bucking decision up the chain of command.
- B. While the particular influence of military rank terminology upon thinking and behavior has not been rigorously demonstrated, it appears that the whole military aura impedes police-citizen cooperation.

4. Communication blocked by tall rank hierarchy / structure:

- A. The longer the chain of command, the more blockage and distortion of information there is.
- B. Since information is essential to the solution of crimes and facilitates the rendering of other police services, any organizational arrangement which impedes the flow of information is especially dysfunctional for police work.
- C. Police departments often have ranks which are placed into positions in the chain of command where they can perform their duties simply by bucking problems up or down. For instance, the ranks immediately above and below the one which is assigned as precinct commander are often superfluous.

5. Insularity:

- A. American policing operates from 17,000 organizational islands that have highly similar rank structure. Exchange of personnel among police department rarely occurs, and exchange with other public or business organizations almost never happens.
- B. The pension system is consistent with the rank system, which encourages individuals to spend their entire careers inside a single agency.
- C. Insularity supports the facet of the police subculture of mutual protection and secrecy, which hinders the efforts of police managers to direct their organizations.
- D. Insularity is the most effective defense against change.¹³⁹

What is not expressly mentioned in the Dorothy Guyot article is the substantial energy that is dedicated and directed to obtaining ranks. The use of this energy may not necessarily be aligned with the organization's goals.

¹³⁹ **Guyot, Dorothy**, *Bending granite: Attempts to change the rank structure*, 1979, Journal of police science and administration, Volume 7, number 3, September 1979, p 252 to 255; see also for a critique of "Bending Granite": **King, William R.**, *Bending granite revisited, The command rank structure of American police organizations*, in Policing: An International Journal of Police Strategies & Management, Vol. 26 No. 2, 2003 pp. 208-230, MCB UP Limited, 1363-951X.

During the Inquiry, the question of paramilitary structure in the age of knowledge was raised in a sincere and constructive manner, specifically the question whether most of the work of frontline members was as well supported as it could be by the paramilitary structure.

According to many interviewees, increasing amounts of the work required of the RCMP necessitates access to specialized or expert resources. It was suggested that, perhaps while the rank structure may be appropriate on occasion for paramilitary operations, a flatter, more collegial structure could be more effective for much of the individual or group types of work. A better balance between these two types of structures would encourage the type of relationships required for the duties undertaken by members as holders of public office.

Subordinates working in a rigid paramilitary structure, when asked to participate with a superior officer in decision-making, often find that they are placed in a situation of conflict of interest. This is especially true when the leader has a powerful personality and strong beliefs in their own opinions. In those situations, do they express what is best in the interest of the organization, or what is in the interest of their careers?

Irving Janis in his classic *Groupthink* enunciates suggestions for preventing groupthink and offsetting the insularity of decision-making groups:

1. The leader of a policy-forming group should assign the role of critical evaluator to each member, encouraging the group to give high priority to airing objections and doubts. This practice needs to be reinforced by the leader's acceptance of criticism of his or her own judgment in order to discourage the members from soft-peddling their disagreements.
2. The leaders in an organization's hierarchy, when assigning a policy-planning mission to a group, should be impartial instead of stating preferences and expectations at the outset. This practice requires each leader to limit his or hers briefings to unbiased statements about the scope of the problem and the limitations of available resources, without advocating specific proposals he or she would like to be adopted. This allows the conferees the opportunity to develop an atmosphere of open inquiry and to explore impartially a wide range of policy alternatives.
3. The organization should routinely follow the administrative practice of setting up several independent policy-planning and evaluation groups to work on the same policy questions, each carrying out its deliberations under a different leader.

This practice- which many specialists in administrative sciences advocate for other reasons – would prevent insulation of an executive in-group from challenging information and independent judgments by well qualified outsiders.

4. Throw-out the period when the feasibility and effectiveness of policy alternatives are being surveyed, the policy-making group should, from time to time, divide into 2 or more

subgroup to meet separately, under different chair-persons, and then come together to hammer out their differences.

5. Each member of the policy-making group should discuss periodically the group's deliberations with trusted associates in his or her own unit of the organization and report back their reactions.
6. One or more outside experts or qualified colleagues within the organization who are not core members of the policy-making group should be invited to each meeting on a staggered basis and should be encouraged to challenge the views of the core members.
7. At every meeting devoted to evaluating policy alternatives, at least one member should be assigned the role of devil's advocate.
8. When the policy issue involves relations with a rival nation or organization, a sizable block of time, perhaps an entire session, should be spent surveying all warning signals from the rivals and constructing alternative scenarios of the rival's intentions.
9. After reaching a preliminary consensus about what seems to be the best policy alternative, the policy-making group should hold a "second chance" meeting at which the members are expected to express as vividly as they can all their residual doubts and to re-think the entire issue before making a definitive choice.¹⁴⁰

The impact of the electronic and digital network on the workplace is evolving rapidly,¹⁴¹ and its effects on organizational structure are not yet well understood. During this Inquiry, the ever-increasing use of the digital network was most apparent. The information being relied on clearly came from other sources than official channels such as management of the RCMP, the SRR Program and other associations.

The access to information, blogs and social networks which provide individual members with a variety of views has increased the expectation of the type of relationship they expect at work. These expectations, if not dealt with appropriately and intelligently, especially with the younger members, may lead to frustrations and conflict.

While organizational charts demonstrate the theory of who reports to whom, a more revealing analysis could be undertaken to discover the web and network of relationships that individuals, as well as different departments or detachments, actually rely on to receive their information.

¹⁴⁰ **Janis, Irving L.**, *Groupthink, Second Edition*, Houghton Mifflin 1982, ISBN 0-395-31704-5. p. 262 to 271.

¹⁴¹ **Castells, Manuel**, *The Rise of the Network Society, Second Edition, The Information Age: Economy, Society and Culture*, Blackwell Publishing 2004 (1996), ISBN 0-631-22140-9.

In an enlightening examination about relationships at work, authors Cross and Parker list whom workers rely on and with respect to which subjects, both inside and outside their organization.

- “Task purposes — people who provide information, resources, or direction that helps us get work done
- Career development (learning) — people who give feedback that is helpful for our career development
- Career support (political support) — people in influential positions who are advocates and provide political support
- Sense making — people who help us cope with and recover from troubling situations at work or personal dilemmas
- Purpose — people who make us feel that what we do at work matters, that our work has meaning.”¹⁴²

The Report of the Human Resources Steering Committee on Alignment, RCMP Rank Structure Working Group 1, March, 1999, from the RCMP archives, p. ii, offers some perspective on how a cross-section of RCMP members view the rank structure.

- The goal of any rank restructuring should be to increase organizational flexibility in allocating personnel to positions, based on competencies to do the job, not necessarily rank.
- Career streaming provides the greatest potential for improved effectiveness and greater flexibility in allocating the right person to a job.
- Promotion is extremely important to RCMP members and attempts to reduce promotional opportunities for members are likely to meet with strong resistance (and possibly failure), unless alternate routes for career progression, salary increase and other means of recognition and status are developed and adopted concurrently with any rank changes.
- Member's expectations for promotions are based on opportunities which no longer exist. For example, in 1988, only 7% of 20-year members were still Csts; in 1998, 61% of 20-year members were still Csts. Removing rank without providing other sources of career satisfaction and marks of success will only increase already high levels of frustration.
- If Cst is the most important rank in the organization, and if many members are likely to spend their career in this rank, then any changes to rank structure or career models in the RCMP should have as their primary goal the improvement of opportunities for (lateral) career progression, development and job satisfaction for Csts, while providing them with reasonable pay increments over the course of their career. Improving the morale, self-esteem and professional pride of constables should be the ultimate goals.
- Greater flexibility and efficiencies can be effected in areas such as promotion, career progression, loss of expertise, rank hierarchy, recruiting, selection criteria, staffing, transfers and classification by adopting new strategies and changing processes, without changing rank structure. Conversely, changing rank structure alone will not improve flexibility without the concurrent adoption of many of the same strategies. The "value added" of changes to rank

¹⁴² Cross, Rob & Parker, Andrew, *The Hidden Power of Social Networks, Understanding How Work Really Gets Done in Organizations*, Harvard Business School Press 2004, ISBN 1-59139-270-5, p. 134.

structure itself is therefore unclear at this point, while the probable negative repercussions are somewhat more predictable.

- The current rank structure and promotion practices have a number of problems associated with them. Each of the rank options examined, however, has its own set of new problems which would have to be addressed. Changing rank structure would therefore mean exchanging one set of problems for another set. The question therefore becomes, “Which set of problems does management prefer to deal with?”
- Given the emotional nature of member’s attachment to rank, the importance of promotion to member’s feelings of success or failure; the ongoing frustration with the promotion process; and the anxiety related to major organizational change, restructuring and reorganization; the climate at this time is considered to be volatile. Any further erosion of career prospects in the form of rank reductions, without the concurrent introduction of alternative means of career progression is likely to create more problems than it solves.¹⁴³ (underlined by author)

An unfortunate and unintended consequence of the rank system within the RCMP that was emphasized during this Inquiry numerous times, but also dealt with by Dr. Linda Duxbury,¹⁴⁴ is its impact on the frontline police services. Specifically, the stress that occurs in those positions at the lower (constable) level of the organizational hierarchy stem from the sense of lack of control and the manner in which supervision occurs. It is in these positions that the majority of RCMP members work and have the greatest contact with the public.

In this regard, the findings of the original Whitehall Study into the social determinants of health, specifically the cardiorespiratory disease prevalence and mortality rates among British male civil servants are most pertinent. The Whitehall I Study, examined over 18,000 male civil servants, and was conducted over a period of ten years, beginning in 1967. A second study, the Whitehall II Study, examined the health of 10,308 civil servants aged 35 to 55, of whom two thirds were men and one third women.

The Whitehall studies found a strong correlation between the grade levels of civil servants and the mortality rates from a range of causes. Men in the lowest grade had a mortality rate three times higher than that of men in the highest grade. An interesting and informative booklet regarding prevention is available online¹⁴⁵.

A way of thinking about stress at work that more closely accords with people’s experience is that it results from an imbalance between the psychological demands of work on the one hand and the degree of control over work on the other. Many jobs involve high demands. It is not demands

¹⁴³ Report of the Human Resources Steering Committee on Alignment, RCMP Rank Structure Working Group, 1 march, 1999, from the RCMP archives, p. ii

¹⁴⁴ **Duxbury, Linda**, *The RCMP, Yesterday, Today and Tomorrow, An Independent Report concerning Workplace Issues in the Royal Canadian Mounted Police*, November 2, 2007, p. 138.

¹⁴⁵ http://www.ucl.ac.uk/whitehallIII/pdf/Whitehallbooklet_1_.pdf

themselves that are the major cause of illness, although high demands are independently associated with ill health. It is the combination of high demands and low control.

The two elements of work that go into the measurement of control are degree of authority over decisions and use of skills, including the opportunity for developing skills. While it is common for demands to increase as the occupational hierarchy is ascended, the degree of control over work decreases with lower positions. Whitehall II provides ample documentation of this fact: the lower the grade of employment, the less control over work.

This combination of imbalance between demands and control predicted a range of illnesses. The evidence from Whitehall II suggested that low control was especially important. People in jobs characterized by low control had higher rates of sickness, absence, of mental illness, of heart disease and pain in the lower back. Further information concerning this issue is available¹⁴⁶.

In his classic work *The Evolving Self*, Robert Kegan refers to the work of William Torbert, specifically, Torbert's understanding of bureaucratic and post-bureaucratic structures and who speaks directly to the differences between those work settings which facilitate development and those which serve to over-confirm or hold too tightly.

On the one hand, an organization can focus on the predefined task such that standards and structures are taken for granted, there is a focus on quantitative results and reality is conceived of as dichotomous and competitive. These dichotomies include: success-failure, in-group-out-group, leader-follower, legitimate-illegitimate, work-play and reasonable-emotional.

With regards to the qualitative evolution in the development of an organization, Torbert suggests a shared reflection about development of an open inter-personal process, with disclosure, support and confrontation on value-stylistic-emotional issues; evaluation of the effects of one's own behavior on others in the organization and formative research on the effects of the organization of the environment (social accounting); direct facing and resolution; appreciation of the particular historical moment of the organization as an important variable in decision-making; creative trans-conventional solutions to conflicts; a deliberately chosen structure with horizontal rather than vertical work role differentiation and commitment to it; and development of symmetrical rather than subordinate relations with the parent organization.¹⁴⁷

¹⁴⁶ The National Institutes for Occupational Health and Safety. (NIOSH) in the US have an interesting website dedicated to work stress that includes details of publications and a video that can be viewed online called Working with Stress. <http://www.cdc.gov/niosh/stresshp.html>.

¹⁴⁷ **Kegan, Robert**, *The Evolving Self, Problem and Process in Human Development*, Harvard University Press 1982, ISBN 0-674-27231-5. p. 244.

Numerous studies¹⁴⁸ have highlighted the implications of the rank structure for organizational change and addressed the needs for change to the culture of the RCMP.

The author Jeffrey Pfeffer, while elaborating on why decision-making is not more effective in organizations, explains how institutionalized forms of power can buffer an organization from reality and the demands of its environment:

What is left is a system in which power and politics occur in a covert fashion, and in which there are elements of rational decision processes occurring simultaneously with political activity. Advocacy may not be legitimate, so different points of view are not really brought out. At the same time, the conflicts remain, so that there are problems with implementation, acquiring accurate information, and getting access to the decision process. Thus, the argument concerning the relationship between power and organizational performance might be more usefully recast to suggest that performance is negatively affected primarily when politics occurs in a system which operates largely under the guise of rationality. However, in this case, it is probably the institutionalized power and trappings of rational choice, more than the conflict and political activity, which cause organizational problems.¹⁴⁹

When police officers are undertaking their statutory duties and exercising their broad power of discretion to investigate and arrest, one could imagine that any structure intended to facilitate the furthering of the common goals would facilitate a collegial approach, as is the case with lawyers, doctors, engineers, psychologists, dentists and other professionals. In fact, it would be opposed to a hierarchical or paramilitary structure in which subordination is paramount.

Should there be a better balance between the aspects of policing requiring a collegial problem-solving method and those better suited to paramilitary command and control?

Are there lines of policing better suited to a paramilitary model, such as contract policing which most often involves constables with corporals or sergeants in management position?

¹⁴⁸ *Rebuilding the Trust, Report of the Task Force on Governance and Cultural Change in the RCMP* (The Brown Report), Submitted to Minister of Public Safety and President of the Treasury Board, December 14, 2007; *Rethinking Police Governance, Culture & Management*, A Summary of the Literature, Christopher Murphy, Paul McKenna, December 3, 2007; *The RCMP, Yesterday, Today and Tomorrow, An Independent Report concerning Workplace Issues*, at the Royal Canadian Mounted Police by Dr. Linda Duxbury November 2, 2007; www.mendeley.com/research/rebtir-les-ponts/ - États-Unis, *Rebâtir les ponts. Rapport de consultation des employés et dirigeants de la Gendarmerie royale du Canada – Division C*, Daniel Robichaud, P.H.D., Chantal Benoit-Barné, Ph.D., Joelle Basque, M. Sc., Groupe de recherche langage, organisation et gouvernance, Université de Montréal, 5 novembre 2008); Reed, Gary Edward, *Organizational Change in the Royal Canadian Mounted Police*, Unpublished Thesis 1982.)

¹⁴⁹ **Pfeffer, Jeffrey**, *Power in Organizations*, Pitman 1981, ISBN 0-273-016639-3, p. 345.

It is interesting that in England the term “Chief Constable” is used in a similar fashion as is the title of the “Chief Justice” in the court system. “First among equals” surely is to be distinguished from an organization with numerous ranks in a hierarchy.

1.3.5 Women’s Contribution to the RCMP

For a short period, a woman accepted to occupy the position of Commissioner, and there have been three women Deputy Commissioners, two of whom were sworn RCMP members. While there has been a woman on the Council for a very short period, there has not been any long-serving woman member. This in no way diminishes the substantial contribution of the women members who contributed so much to the RCMP but it does highlight the issue of women fully participating in the RCMP.

Women have been police officers since 1974 in the RCMP .The culture, the structure of the organization, job design and the characteristics valued have evolved, as in most policing, in a male dominated police service.

How this factor may have contributed to women being attracted to this type of career or not is a good question. How this fact influences or not women seeking promotions is obviously to be better understood in terms of policy formation.

It is worth noting that those countries that are often considered the more desirable societies in which to live are also those where the degree of participation of both men and women are most equal¹⁵⁰. With respect to the subject of policy-making, Lyn Kathlene states:

Women and men share many similar concerns and views of the world. However, in certain fundamental ways, women’s perspectives differ from men’s. We should expect not only that women might serve traditionally female interests better than men but also that women may be providing a counterbalance to public policy making in general. While some of the differences documented in this research may seem subtle, the implications of these differences are profound. For if most women do see and use a broader range of resources when formulating policy, then we should have more sensitive policy making and a broader definition of representative democracy. If

¹⁵⁰ *The Global Gender Gap Report 2011*, <http://reports.weforum.org/global-gender-gap-2011/>

women see society and the individual inextricably linked, then we should expect to see more comprehensive preventive policies rather than piecemeal reactionary policies.¹⁵¹

Clearly not all women, nor all men, are the same. Nonetheless, being of the same gender, they can often share general characteristics. While women tend to be more risk-averse than men, these attitudes seem to vary less among professional women and men than in the population as a whole¹⁵².

These different social agendas between the sexes have implications for group size, and for degrees of intimacy and empathy. Males may spend their time in larger groups, depending on the nature of the activity. Females may network more, but tend to devote more time to intimacy with a small number of people. The male social agenda is more self-centered in relation to the group, with all the benefits this can bring, and it protects one's status within this social system. The female agenda is more centered on another person's emotional state (establishing a mutually satisfying and intimate friendship)... Such statements are, of course, open to misunderstanding. Males also have good friends, and these are often close and confiding. We are only talking about difference in degree, not absolute differences. And as with all of these psychological studies, we are only talking about group averages, rather than individuals.¹⁵³

As one long-serving women member explained to the Inquiry, if women ran policing, there would be a far greater emphasis on building relationships within the communities and police work would be far more preventive and based on the information obtained from the community relationships.

The author Lyn Kathlene in Carroll, Susan J. (editor), *The Impact of Women in Public Office* writes:

Indeed, an examination of how chairmen and chairwomen respond to witnesses and lead committee discussions suggest that even when women obtain the same power as men, they will use it differently. Women's use of the chair to facilitate committee interaction among committee members and the witnesses without joining in the substantive debate itself is in marked contrast to men's tendency to use their chair to control and direct committee debate along the lines of interests to them¹⁵⁴.

¹⁵¹ **Kathlene, Lyn** in *Words that Matter, Women's Voice and Institutional Basis in Policy Formation* in **Carroll, Susan J.** (editor), *The Impact of Women in Public Office*, Indiana University Press 2001, ISBN 0-253-34008-X, page 143.

¹⁵² **Arch, Elizabeth**, 1993, *Risk-taking: a motivational basis for sex differences*. *Psychological Reports*, 73(3): 6-11.; **Gneezy, Ur & M. Niederle, & A. Rustichini**, 2003. *Performance in competitive environments: gender differences*. *Quarterly Journal of Economics*, 118(3): 1049-1074.

¹⁵³ **Baron-Cohen, Simon**, *The Essential Difference, The Truth About the Male & Female Brain*. Basic Books 2003, ISBN 0-7382-0844-2, p. 45.

¹⁵⁴ **Kathlene, Lyn** in **Carroll, Susan J.** (editor), *The Impact of Women in Public Office*, Indiana University Press 2001, ISBN 0-253-34008-X, p. 39.

It is interesting, for the purposes of demonstration only, to consider the standing of women in Canada according to the research by the World Economic Forum Gender Gap¹⁵⁵. According to this study, Canada ranked 18th in the world.

The following may shed some light on how the characteristics of policing could be enhanced by and attract more women by better taking into account their strengths and preferences¹⁵⁶. The noted author Sally Helgesen explains the type of organizational structure for the type of relationships generally preferred by women:

As I studied both the women's organizations and, later, the web style structures that form the subject of this book, I began to notice that various aspects of the web tend to reinforce one another. This sets in motion a kind of centripetal force that gives the structure as a whole a coherence greater than the sum of its parts. Since web structures are circular rather than pyramidal, those who emerge in them as leaders tend to be people who feel comfortable being in the center of things rather than at the top, who prefer building consensus to issuing orders, and who place a low value on the kind of symbolic perks and mark of distinction that define success in the hierarchy. This preference on the part of web style leaders infuses their organizations with a collegial atmosphere, which in turn enables people to focus upon what needs to be done rather than who has the authority to do it.¹⁵⁷

Michael Gurian and Barbara Annis explain:

Male leaders tend to be more prescriptive in their management-they will prescribe, direct, tell people what to do more aggressively, in general, than women do (obviously, some women are exceptions to this rule!)... Female leaders tend to be more descriptive in their management- they tend to describe what they are looking for, and spend more time detailing to employees-and hearing from employees- how to accomplish the goal. It is probable that they spend this greater time in relationship management because they have up to double the verbal capacities of men in their brains (particularly the greater connectivity between the verbal capacities in the frontal and temporal lobes and the emotive experiences they are having in the limbic system)... In conflict management, men tend to seek out more direct conflict than women (of course, individual personalities, as well as up-bringing can factor into conflict seeking or avoidance). Because of their aggression hormone reliance, from early in life male seek out and experience contest, conflict and disruption and try to shape their own personal power assets through confronting the power of other males in hierarchy. Most males get a lot of practice with this.¹⁵⁸

¹⁵⁵ *Global Gender Gap Report 2011*- World Economic Forum, www.weforum.org/issues/global-gender-gap

¹⁵⁶ **Simon Baron-Cohen**, *The Essential Difference, The Truth About the Male & Female Brain*. Basic Books 2003, ISBN 0-7382-0844-2.)

¹⁵⁷ **Helgesen, Sally**, *The Web, A New Architecture for Building great Organizations*, Currency Doubleday 1995, ISBN 0-385-42364-0. p. 20; also see her other work *The Female Advantage, Women's Ways of Leadership*, Doubleday Currency 1990, ISBN 0-385-24878-4.

¹⁵⁸ **Gurian, Michael** with **Annis, Barbara**, *Leadership and the Sexes, Using Gender Science to Create Success in Business*, Jossey-Bass 2008, ISBN 978-0-7879-9703-8, p. 60.

The author Lyn Kathlene notes, referring to how gender orientation affects the way the problem of crime is described:

Since men focus on the crime event, the policy questions they ponder are more narrowly defined, such as how to improve the administrative aspects of the criminal justice system or the prison system, how to keep criminal off the streets, or how to make criminals take responsibility for their behavior. Women's view of crime, as a life time process, lead to broader policy questions such as how to prevent people from turning to a life of crime or how to make the criminal a functioning part of society after incarceration.¹⁵⁹

Concerning the subject of the influence of gender in moral decision making Carol Gilligan in her seminal work, *In a Different Voice*, writes that "men tend to be more concerned with people interfering with each other's right, while women concern themselves with the possibility of omission, of not helping others, when one could"¹⁶⁰.

The implications of the allegations of the harassment of women peace officers have received particular attention in the media. It will require joint efforts between the management of the RCMP and the SRRs to render the workplace "women-friendly".

On the subject of the organization of society generally, Richard Henry Tawney, noted economic historian, wrote:

It cannot secure that men live up to their principles. What it can do is to establish their social order upon principles to which, if they please, they can live up and not live down. It cannot control their actions, it can offer them an end on which to fix their minds and, as their minds are, so, in the long run and with exceptions, their practical activity will be.¹⁶¹

1.3.6 Public and Organizational Goals Versus Individual Interests

Whether it is the family or any other institution, the contribution and benefits of each party can vary infinitely. There can be intrinsic or extrinsic rewards. There may be an infinite list of expectations. Each party brings to bear their respective knowledge and competence, their intuition and judgment, and relative power between them and/or the resources they have. Participating in the goals of the RCMP more fully often results from attitudes.

¹⁵⁹ **Kathlene Lyn:** *Words that Matter, Women's Voice and Institutional Bas in Policy Formation* in **Carroll, Susan J.** (editor), *The Impact of Women in Public Office*, Indiana University Press 2001, ISBN 0-253-34008-X. at p. 37.

¹⁶⁰ **Gilligan Carol,** *In a Different Voice, Psychological Theory and Women's Development*, Harvard University Press 1982, ISBN 0-674-44543-0.)

¹⁶¹ **Tawney, R. H.,** *The Acquisitive Society*, Harcourt, Brace and Company 1920. p. 180.

Whether it is the family, the school, the workplace or any other institution, striking a balance between what is considered a worthy contribution or the valuable output from combined efforts of the members of the institution, and what are to be the fair benefits for the individual interests of the participants, is a difficult but critical exercise.

Any successful organization must strike a balance between what is required from each member and what is required for the whole organization to succeed.

The Inquiry noticed a tendency towards a growing sense of entitlement directed at what one can take away from their association with the RCMP. This philosophy of entitlement was not restricted to any rank. The Inquiry learned that the roots of this protecting of what one has acquired in the RCMP emanate not only from human nature but from the manner in which public servants may be treated.

As was explained to the Inquiry, when you work for the government, you accept that you have in the final result, little, if any, negotiating power. Therefore, once you acquire a benefit, right or entitlement to something, you must never put it at risk.

Hence, once a rank is acquired, or a member is assigned to a special unit or any other position in the RCMP with certain intrinsic or extrinsic rewards, it then becomes difficult to change the work of that particular member without a promotion. This overall pattern does not always provide the flexibility that may be required by the organization. In addition, once a rank is granted, it does not allow for the incumbent to be removed and placed in any position requiring a lower rank even if the individual concerned is better suited to the work in the lower rank. It is for that reason that the organization's adaptability often suffers.

Several interviewees expressed the view that finding mutually acceptable approaches by management and the SRRs that affect the rights of any constituency within the RCMP is extremely difficult given the lack of trust. This situation, especially when the changes are based upon the premise that they will lead to the organization benefitting as a whole, is indeed serious. This can lead the government using its ultimate power and simply legislate changes to working conditions.

The consequences, however, of using this type of legislation are not always immediately apparent. Whether this tendency continues and, if it does, for how long, remains to be seen. What is perhaps most disconcerting are the results of failing to cooperate in ways that are mutually beneficial.

During this Inquiry, a number of younger members, especially in frontline policing, raised the issue of whether the present internal systems for rank, promotion and the entitlements that are attached to certain positions in specialized units were in fact hindering the accomplishment of the organization's goals. They raised the issue that sometimes the specialized units provide non-pecuniary conditions that can have substantial consequences on general duty policing. This

occurs when frontline policing finds itself without enough senior, experienced constables that are so necessary given the recent hiring of large numbers of younger members. This might require reevaluating and re-balancing the individual member's sense of entitlement and the organization's respective and goals.

The shortage of senior constables in frontline policing was considered to be an example of individual interests prevailing over the need for mentoring and coaching of the increasing number of young members on the frontline. It was suggested that some senior members sought out positions in specialized groups where they preferred the quality of the work and were not usually required to work shifts.

Specialized units within the RCMP include among many others:

- IMET - Integrated Market Enforcement Team
- CCS- Commercial Crime Section (White Collar)
- MCU - Major Crimes Unit
- GIS- General Investigations Unit
- NSIS - National Security Investigation Section
- CIS - Criminal Investigation Section
- IBET - Integrated Border Enforcement Team
- FIS - Forensics Investigation Section
- ICE - Integrated Child Exploitation Section
- FES - Federal Enforcement Section

Organizations can act, to differing degrees, as a political system focusing on the respective interests, the conflicts and the power plays amongst the members of that organization. A look at organizations using various political principles which approve or legitimize its rules and the factors or interests that shape the politics within the organization¹⁶² can be a useful tool in understanding how organizations function in practice as opposed to the theory as to how the planners imagined.

As David Bohm, aptly expresses the risks of the fragmentation of the whole into so many constituencies that the interests of the whole cannot prevail:

Society as a whole has developed in such a way that it is broken up into separate nations and different religious, political, economic, racial groups, etc. Man's natural environment has correspondingly been seen as an aggregate of separately existent parts, to be exploited by different groups of people... Similarly, each individual human being has been fragmented into a large number of separate and conflicting compartments, according to his different desire, aims, ambitions, loyalties, psychological characteristics, etc... to such an extent ...the notion that all these fragments are separately existent is evidently an illusion, and this illusion cannot do other than lead to endless conflict and confusion. Indeed, the attempt to live according to the notion that

¹⁶² **Morgan, Gareth, *Images of Organization*, Sage, 1986, ISBN 0-8039-2830-0, Chapter 6.**

the fragments are really separate, is, in essence, what has led to the growing series of extremely urgent crises that is confronting us today.¹⁶³

As well, there are a number of allowances for certain postings, clothing and kit. There is also the possibility of adjustment payments that are paid by Treasury Board that take into account the cost of housing, for instance, on the mainland of B. C.

Several members of the RCMP, in various ranks, expressed the view that individual interests of particular constituencies within the Force knowingly prevail over the interests of the whole organization.

They cited the example of the automatic promoting of SRRs after serving two terms. Members questioned whether the true intention of the SRR Program was being subverted by individuals using the program as an “early retirement” program. Also mentioned were the commissioned officers who are sometimes posted in different locations to acquire experience but spend too little time there to make a significant contribution. Too many workplace issues were not, in the views of these members, being addressed in an open-minded manner.

The RCMP has some 11 different ranks of members. Amongst the non-commissioned officers, the ranks are: Constable, Corporal, Sergeant, Staff Sergeant and Sergeant Major. The commissioned officers’ ranks are: Inspector, Superintendent, Chief Superintendent, Assistant Commissioner, Deputy Commissioner and Commissioner. Each promotion brings with it an increase in salary. Given the substantial number of ranks and the incentives attached to each of them, it is understandable that members interested in such promotions would spend some time and effort in securing a higher rank.

Each of these promotions entails a process and time. In addition to rank, there is also the issue of which type of policing a member is assigned to. Different types of work, even within the same rank, have different non-monetary benefits such as whether one is on general duty which is involved in front-line policing and responding to calls or in a specialized unit such as the major crime unit. This may impact whether one works shifts, how much supervision one is subject to or whether overtime is a regular requirement.

Then there is the issue of which RCMP location one is posted to. It could be that a particular posting will or will not be satisfactory for a member whose spouse is a professional or works outside the home and who would need to find employment.

Sometimes the numerous number of ranks can act as impediments within the organization. To what extent or not do the existing ranks play a role in placing the person with the right

¹⁶³ **Bohm, David**, *Wholeness and the Implicate Order*, Routledge, 1980, ISBN 0-415-11966-9. p 1-2.

qualifications in the position he or she was qualified for would have been in the interest of the whole organization?

For example, in order to receive a promotion, a constable, rather than remain in a position where he is doing valuable work to which his or her skills and experiences are particularly suited to, would have to apply for a non-commissioned officer's position where perhaps his or her skills are less suited. The Inquiry learned that often an unfortunate cultural stigma results when one remains in a rank for too long without a promotion. The example was given of a constable undertaking frontline policing in an exemplary fashion, whose choice not to be a candidate for promotion could simply be due to personal preferences or family obligations.

1.4 A Modified Mandate for the Council

As discussed above, there have been significant developments in the social, economic and legal context in which the RCMP operates, that strongly support modifying the Council's mandate.

To date, the deliberations of the Pay Council have consisted essentially in an exchange of views and in the formulation of recommendations regarding extrinsic rewards such as salary, benefits and allowances. These work conditions fall under the jurisdiction and authority of the Treasury Board.

As discussed above, the spectrum of activities for which an association (in the present case the SRRs in the RCMP) may represent the members has been defined as protecting "associational collective activity in furtherance of workplace goals".¹⁶⁴

Consultation with regards to "Workplace Goals" will most often involve discussing some of the work conditions of members.

The concept of "workplace goals" certainly encompasses more than those conditions under the jurisdiction of the Treasury Board, which include compensation, classifications, benefits and allowances. Alternatively, the work conditions involved could be only those that are under the jurisdiction of the Commissioner, including hiring, promotions, discipline, duties and learning. Pursuit of a particular "workplace goal", however, may just as easily involve discussion of work conditions that fall under either the authority of the Treasury Board or the Commissioner.

This Inquiry, having considered the insights gathered in interviews and after reviewing the various relevant reports, has attempted to provide examples of the types of issues that would be difficult to resolve in a cooperative manner without a renewed and enhanced mandate for the Pay Council.

The process that should take place in Council will require an understanding of how change occurs and what hinders the attainment of workplace goals. It requires remembering that, as individuals with our respective imperfections that to expect that any organization would not have its own would be unrealistic. What is now crucial is developing the maturity to understand the issues to be resolved, as well as what behaviors must be changed, what systems are causing the difficulties.

In *The RCMP, Yesterday, Today and Tomorrow, An Independent Report concerning Workplace Issues in the Royal Canadian Mounted Police*, Dr. Linda Duxbury writes on balancing performance with intrinsic motivators and suggests that the RCMP:

¹⁶⁴ *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, [2011] 2 SCR 3, paragraph 38.
<http://www.canlii.org/en/ca/scc/doc/2011/2011scc20/2011scc20.html>

23. Reduce its focus on short term satisfiers such as pay and benefits and instead make the link between good performance and the opportunity to receive intrinsic motivators such as feelings of contribution, the opportunity to learn, more challenging work, visibility in the community etc.¹⁶⁵

Given the present state of workplace relations, aligning organizational and individual goals may be a difficult task. Pursuit of workplace goals, such as exploring intrinsic rewards to make the work more interesting, challenging and rewarding, which could result in greater commitment to the organization's goals, has not been seen as a priority.

There are numerous elements that can play a role in creating workplace dynamics and environment. Pursuing a workplace goal may involve some of the following factors or work conditions:

- Will a member's interests be affected?
- Is the goal consistent with the culture?
- An individual's open-mindedness
- The expectations and norms of the group
- The discretion afforded to a member
- The attitudes and respect between individuals of all ranks
- Greater authority and accountability for members in executing their duties, as is the case with their duties as office holders
- The salary, benefits and allowances paid to members
- The design of the position occupied by a member
- The authority delegated to a member
- The exposure to circumstances that provide the opportunity for individual development through new experiences and learning
- The recognition afforded to a member

It is important that the particular elements and work conditions involved in or related to a workplace goal that is being discussed be studied with an understanding of the results of the interaction with one another.

The practice of discussing work conditions in different forums, in isolation, without the benefit of first exchanging views before a neutral Chairperson, is less likely to provide a coordinated overall approach to benefit the organization and its members. The Chairperson would head in an independent forum, in accordance with the legal principles of consultation and good faith

¹⁶⁵ **Duxbury, Linda**, *The RCMP, Yesterday, Today and Tomorrow, An Independent Report Concerning Workplace Issues in the Royal Canadian Mounted Police*, November 2, 2007, p. 138.

established by the Supreme Court of Canada, outside of the regular paramilitary rank structure and with the assistance of the Research and Support Branch of the Council.

The interviews revealed that the issue of job satisfaction has not been seriously addressed by taking into account all of the conditions that contribute to the workplace dynamics.

With regards to intrinsic rewards such as job satisfaction, one's sense of contribution, the use of one's faculties, the structure and design of the position, the level of discretion and the level of trust that exists with management, consideration and attention was felt not to be part of the Council's mandate as it exists.

To focus solely on compensation issues at this juncture, especially during a period where there are so many different issues facing the organization, including government restraints, would not appear to be constructive.

The evolving context and the complexity of the multiple factors (intrinsic as well as extrinsic) that influence the workplace dynamics in the numerous locations of the RCMP should first be addressed as a whole.

Numerous workplace issues are discussed at the local and divisional levels of the RCMP. As well, at a national level, the SRRs and management discuss individual issues in committees or particular policy centers. These should not be affected by the modified role proposed for the Council.

The decisions of the Supreme Court of Canada have now enunciated the parameters of the associational rights under the Constitution of Canada, specifically section 2(d) of the Charter.

The right of the SRRs to consult in good faith with both the Treasury Board and the RCMP concerning workplace goals under their respective jurisdictions should be respected and have the mandate of the Council modified to include consultation with respect to working conditions under the jurisdiction of the RCMP.

There are increasing signs, especially among the younger members, that there is dissatisfaction with respect to the manner in which their representatives do not interact directly with Treasury Board regarding salary, benefits and allowances.

However, there are other considerations from an employer's perspective which also must be considered. They include the necessity to be made aware of the views of the SRRs regarding issues such as compensation which, while under the jurisdiction of Treasury Board, are important elements affecting the RCMP. It is for that reason that consideration of this and other stakeholder issues should first be discussed with the Council while positions are fluid and different perspectives can be exchanged in a forum with a neutral Chairperson.

At present, the mandate of the Council does not cover making recommendations with respect to the work conditions for the senior members of management in the RCMP. These ranks include Deputy Commissioner, Assistant Commissioner and Chief Superintendent. These individual commissioned officers have their work conditions determined within the framework of the public service. As with other public servants at this level, there is an external committee that makes recommendations to the Treasury Board in this regard. Having considered the role of the senior representatives of the organization, including acting as such in the Council's work, we are of the view that this practice should continue. To include the senior management as part of the exchanges of the Council would clearly create a conflict of interest.

The atmosphere and constructive participation that a renewed and modified Council has the potential to attain will be encouraged by broadening the discussion from solely salary and benefits to a wider range of subjects, including the economics of the policing services, of which compensation is a part.

The clarification by the Supreme Court of Canada¹⁶⁶ as to the interpretation of the rights and derivative rights with regards to workers and the limits of the obligations of the employer in virtue of section 2(d) concerning the right to association under the Charter has created the necessity to reevaluate the mandate of the Council in several respects.

The Council's purpose would be to provide a unique forum for the exchange of significant workplace goals involving changes to workplace conditions that may, in certain cases, involve more than one condition or a particular condition that, due to its nature, is better suited to the unique composition of the Council.

This would include several external specialists, a capacity to undertake independent research and to have the exchanges take place under the guidance of neutral Chairperson and Vice-Chairperson. This is aimed at encouraging innovative problem-solving for the more significant workplace goals of the parties.

The work and mandate of the Council are not designed nor intended to eliminate the use of policy centers or the existing sub-committees involving SRRs. The representatives of the parties are to liaise and coordinate the activities of the Council with their respective constituencies.

¹⁶⁶ *Dunmore v. Ontario (Attorney General)*, 1997 CanLII 12214 (ON SC); *Health Services and Support - Facilities Subsector Bargaining Assn. c. Colombie-Britannique*, 2007 CSC 27, [2007] 2 R.C.S. 391; *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, [2011] 2 SCR 3.

Presently, each of the institutions involved with different aspects of the traditional employer-employee relationship conducts its deliberations within its own structure and culture. It is essential that there be a forum that provides the environment, atmosphere and decorum to permit integrative thinking and the consequences of the interaction and dynamics resulting from the acts each other.

In order to afford greater insight into and understanding between the cultures of the Treasury Board and of the RCMP, as well as an overall appreciation of the respective role of compensation and its interplay with the other elements involved in the workplace that effect behavior, the Treasury Board representatives and the SRRs should participate in the consultation with the Council prior to their dealing directly with each other on compensation.

Recommendations re: Mandate

RECOMMENDATION 1

That the Council's mandate be modified as follows:

To provide a forum for the exchange of perspectives and suggestions concerning collective workplace goals between SRRs and management that involves work conditions under the jurisdiction of the RCMP and under the jurisdiction of the Treasury Board and their respective representatives. These exchanges and discussions should take place initially when the respective positions are still fluid and may take into consideration the views and reasoning of the other members of the Council. At different stages of such exchanges, the representatives of the Treasury Board and as required representatives of the Provinces and Territories should be included. In this role, the Council would act as a "hub" forum.

RECOMMENDATION 2

That the Council's mandate be modified as follows:

The Council should no longer make recommendations concerning the work conditions (salary, benefits and allowances) under the jurisdiction of the Treasury Board to the RCMP.

It should, however, continue with its Research and Support Branch and the provision of independent data concerning the police universe and comparative police studies.

Once the SRR's representatives have made their workplace goals with respect to the work conditions under the jurisdiction of the Treasury Board known to the Council, and the parties have had the opportunities to exchange views, the SRRs on the Council along with their executive, would then enter consultations directly with the representatives (Treasury Board Secretariat) of the Treasury Board.

RECOMMENDATION 3

The deliberations and considerations of the Council should be the forum for the exchange, research and deepening of the members' understanding of respective positions but, as importantly, a source of pro-active research and center for innovation for pecuniary and non-pecuniary rewards such as job satisfaction and self-development.

RECOMMENDATION 4

That the Council's mandate include providing a forum for the exchange of views, ideas, and consultation in good faith, with respect to the collective workplace goals of both the representatives of the RCMP and SRR to develop recommendations for the Commissioner of the RCMP.

RECOMMENDATION 5

The deliberations and considerations of the Council should also provide the forum for the exchange, and deepening the member's understanding of respective reasoning but, as importantly, a source of pro-active research and center for innovation for pecuniary and non-pecuniary rewards such as job satisfaction and self-development.

RECOMMENDATION 6

The Council should be more appropriately referred to as the RCMP Relations Council or the RCMP Professional Relations Council.

2. The Structure of the Council

The space between people working together is filled with conflict, friction, strife, exhilaration, delight, and vast creative potential.¹⁶⁷

The Pay Council, as constituted, has five members: an impartial chairperson, two RCMP management representatives and two SRRs of the RCMP membership.

It must be remembered that this forum, including an independent Chairperson, rather than simply having representatives of the members and the employer, was a novel attempt to create an alternative dispute structure and process of this type in the federal public service.

The first Chairperson of the Council, Paul Lorden, was widely recognized for his contribution to getting the Pay Council off the ground. He praised the readiness of Commissioner J. P. R. Murray and the Senior Executive Committee for taking a risk with this novel structure: “the unqualified support for an idea untried just a year ago must also be duly recognized”. Their support and the role of the Division Staff Relations Representatives (DSRR) Caucus “in endorsing and bringing into being the Pay Council provides strong testimony concerning their modern, consensual and effective approach to labour relations concerns”¹⁶⁸.

It proposed that the structure should follow directly from the purpose of the Pay Council. It was to provide a forum to facilitate deeper understanding, collaboration and an exchange of views concerning the issues within its mandate.

Obviously, what is crucial to any forum’s work is the talent, constructive attitudes of the individuals that it is composed of. No plan can ensure these qualities or the functional relationships that are so necessary.

When one examines the capacity for creativity in many of the RCMP’s police operations, one finds that many members demonstrate not only imagination but widely respected efficacy.

As a society, we enjoy the benefits left by those before us who collectively fought inhumanities and worked for social reforms that permit a better life. Our own collective efficacy will in turn shape how future generations will live their lives. Considering the pressing world-wide problems that loom ahead, people can ill afford to trade efficacious endeavors for public apathy or mutual

¹⁶⁷ **Mau, Bruce**, Bruce Mau Design, *An Incomplete Manifesto for Growth*. This design manifesto was first written by Bruce Mau in 1998, articulating his beliefs, strategies, and motivations. The manifesto outlines BMD's design process. <http://www.brucemaudesign.com/4817/112450/work/incomplete-manifesto-for-growth>, paragraph 16.

¹⁶⁸ Royal Canadian Mounted Police Pay Council, 1997 Annual Report, June 16th, 1997, see Foreword.

immobilization. The times call for social initiatives that build people's sense of collective efficacy to influence conditions that shape their lives and that of future generations.¹⁶⁹

The challenge for the proposed Council is to have as its participating individuals possess the abilities for innovation and complex problem-solving. It is for their respective constituencies to ensure this happens.

As is pointed out by Sy, Barbara and Daryl Landau:

There may be countless creative people in the world but many of them do not adapt well to structured environments like corporations, institutions, or governments. The very thought processes that foster creativity make those people unwilling or unable to work within organizational structures.¹⁷⁰

The same authors point out that "A group made up of people with different training and experience will start from a better knowledge base than that of any of them individually"¹⁷¹.

There are greater opportunities for finding solutions when the exchanges consider multiple ways to solve issues and the parties' approaches remain fluid. This situation allows for more creative and imaginative problem-solving.

Hopefully, the participants chosen to work on the Council will have an established record of innovative problem solving in a practical and collaborative manner and demonstrated creative tendencies necessary for this type of work.

Influencing another person about a given matter requires having developed critical analysis skills. They include:

1. Identifying and challenging assumptions
2. Challenging the importance of context
3. Imagining and exploring alternatives.
4. Imagining and exploring alternatives.¹⁷²

It is also important to avoid the pitfalls of group-think, which can arise when broad decision-making bodies are constituted out of a homogeneous group with the same gender, age group and social background.¹⁷³

¹⁶⁹ **Bandura, Albert (editor)**, *Self-Efficacy Changing Societies*, Cambridge University Press 1995, ISBN 0-521-47467-1, p. 38.

¹⁷⁰ **Landau, Sy & Landau, Barbara & Landau, Daryl**, *From Conflict to Creativity, How Resolving Workplace Disagreements Can Inspire Innovation and Productivity*, Jossey-Bass 2001, ISBN 0-7879-5423-3, p. 90.

¹⁷¹ Id. p. 94.

¹⁷² **Brookfield, Stephen D.**, *Developing Critical Thinkers, Challenging Adults to Explore Alternative Ways of Thinking and Acting*, Jossey-Bass 1987, ISBN 1-55542-055-9. p 7; see also **Hughes, William, & Lavery, Jonathan**, *Critical Thinking, An Introduction to Basic Skills, Fourth Edition*, Broadview Press 2004, ISBN 1-55111-573-5.

¹⁷³ **Janis, Irving L.**, *Groupthink*, Second Edition, Houghton Mifflin 1982, ISBN 0-395-31704-5. For a critique of *Groupthink* see Wikipedia, : <http://en.wikipedia.org/wiki/Groupthink>.

As Carl R. Rogers and F. J. Roethlisberger write about relations with other people, “If you are willing to enter his private worlds and the way life appears to him, without any attempt to make evaluative judgments, you run the risk of being changed yourself.”¹⁷⁴

Albert Bandura in *Self-Efficacy, The Exercise of Control*, explains the challenge of a given group’s capacity to attain its goals.

Perceived collective efficacy is defined as a group’s shared belief in its conjoint capabilities to organize and execute the courses of action required to produce given levels of attainments. ... Group functioning is the product of the interactive and coordinative dynamics of its members. Interactive dynamics create an emergent property that is more than the sum of the individual attributes. A host of factors contribute to the interactive effects, some of these factors are the mix of knowledge and competencies in the group, how the group is structured and its activities coordinated, how well it is lead, the strategies it adopts, and whether members interact with one another in mutually facilitory or undermining ways. The same participants can achieve different results depending on how well their particular skills and efforts are coordinated and guided. A group’s capability to perform as a whole can vary widely under different blends of interactive dynamics. Therefore, perceived collective efficacy is an emergent group-level attribute rather than simply the sum of the members’ perceived personal efficacies.”¹⁷⁵

The structure of the Council must strike a balance between concern for the interests of the whole organization and those of the various stakeholders. The Council’s structure requires a measure of flexibility built into it so it may be an effective forum today but agile enough to adapt to the requirements and issues it will handle in the future.

The authors DeLord, Burpo, Shannon and Spearing in *Police Union power, Politics, and Confrontation in the 21st Century*, state that the challenges require a more structured national police labor-management council. They describe the need for recognition of the mutual interests and goals as follows:

In coming together in a joint forum, the parties would have to agree that they have a vested interest in communication and the exchange of ideas with the ultimate goal of confronting the challenges presented to the policing profession, locally, nationally and globally.

As noted economist Hazel Henderson explains:

Most institutions geared to meeting today’s and those of future sustainable development will require restructuring and cooperative linking in networks and consortia of both public and private actors

¹⁷⁴ **Rogers, Carl R. and Roethlisberger F.J.**, *Barriers and Gateways to Communication* p.294 Harvard Business Review, On Human Relations, Harper & Row 1979, ISBN 0-06-011789-3, at p. 297.

¹⁷⁵ **Bandura, Albert**, *Self-Efficacy, The Exercise of Control*, W.H. Freeman and Company 1997, ISBN 0-7167-2850-8, p. 477. [Emphasis added].

and civil organizations... Public-sector organizations are expected to be socially concerned, cooperative, and less than efficient, while private-sector organizations are encouraged to be greedy, competitive, self-interested, and even rapacious....As appropriate to the Information Age, the new productive institutions will be knowledge intensive, communications intensive, and increasingly widely distributed both locally and globally. The key to all these new productive institutions will be their internal cultural DNA codes: their rules, values and goals, as well as codes of conduct....but are precursors to wider accountability.¹⁷⁶

This Inquiry has been made well aware of the challenges that the RCMP faces. It has been told of the difficulty that the proposed Council would face and also of the deep disbelief of some members in the possibility of meaningful and positive change to their workplace. This state of affairs did not develop over a short period of time. It might be much easier to allow it to continue than to begin a process of improvement. However, at what price?

2.1 The Chair

The choice of the neutral Chairperson of the Council is crucial. The proven integrity and abilities of the Chairperson to facilitate and encourage collaborative approaches to problem-solving are fundamental. The individual should have a proven record in this regard. The Chairperson's career should demonstrate that he or she has the tenacity required for this role. An understanding of organizational change would be an important asset.

Individuals with the qualities sought in the Chairperson are rare. Such individuals are most often extremely busy. A posted want ad makes it unlikely to attract the quality of candidate required. Rather, targeted recruiting is an alternative means that should be considered in securing qualified candidates. Successful recruiting may require retaining knowledgeable and specialized recruiters.

Given the explanations in the previous chapter regarding the independence of the police and the discretion of the members of the RCMP in exercising their statutory powers in criminal matters, the Chairperson may play an important role in acting as a facilitator in exchanges concerning issues that arise from the practical application of this Constitutional principle.

The RCMP Pay Council has had three Chairpersons since its inception in 1996-1997. The first Chair was Paul Lorden and the second Chair Mr. Fred Drummie.

The Inquiry learned that during the first and second five-year terms, the members of the Council shared a common vision of the aims of the Council's work, a high level of commitment to the Pay Council's success and their talents that were complimentary.

¹⁷⁶ **Henderson, Hazel**, *Building a Win-Win World, Life Beyond Global Economic Warfare*, B-K 1996, ISBN 1-881052-90-7.p. 284-285. [Emphasis added].

The third term of the Council was chaired by Michael McDermott, a retired senior civil servant with substantial experience in mediation. The Inquiry learned that the issues facing the Pay Council during this term were extremely difficult. The tension created by the Treasury Board's decision to roll-back previously agreed-to salary increases undermined the perception that the Council's processes were effective.

It should also be noted that the context in which the Pay Council operated during the third term was volatile. There were significant leadership issues facing the Force. There was litigation before the courts questioning the SRR Program. During Pay Council exchanges, there was a pronounced tendency to abandon cooperative approaches to the issues and goals expressed.

The parties towards the end of the third term tended to respond with their respective rhetoric, suggesting relatively simple solutions for complicated issues.

Another significant component of the present Pay Council was to remove the research function involved in determining comparable conditions of employment from the internal control of the RCMP. The Pay Council was to provide neutral fact-finding. It was believed that by avoiding arguments which typically occur in traditional labour negotiations about what are comparable salaries and benefits, the parties could start from a common, unbiased body of facts and thus expedite discussion of their perspectives about substantial issues.

The hard work of resolving conflicts between different constituencies may involve delving below the stated demands into the logic and motivation for the goals that are pursued. This particular aspect of the work of the Council requires an individual as Chair with a proven track record for facilitating the type of dialogue necessary in creating an environment for innovation.

For the individuals involved, the leadership role played by the Chair has been critical to the success and efficacy of the Council. While each of the other members bring experiences, competencies and related qualities to their role, certain fundamental abilities and knowledge in the person of the Chair are considered crucial. They include:

- A capacity to see the “larger picture” and facilitate the development and understanding of other members of the council.
- The integrity, the neutrality and the open-mindedness to encourage the various parties to critically examine their own assumptions and beliefs.
- The stature and a career record that will enable the work of the Council to receive the respect and have the influence required.

Edward T. Hall, in *Beyond Culture*, explains some of the main reasons why mediation is effective:

1. Its premise is to empower individuals to make healthy choices about what is best for them. Mediation is a non-violent form of communication which allows all participants to explore their

feelings and express themselves without being judged. It is a process which allows both parties to have the same amount of time to share what they think, why they think the way they do, and look for solutions to their problems along with the party they have the problems with.

2. An effective mediator acts as a third person neutral whose only purpose is to facilitate a dialogue amongst the disputing people. They have no vested interest in any outcome other than helping the people sort out their differences, reframe their problems and be a catalyst for a creative resolution to their issues.

3. In some instances, if both people are highly angered and emotionally off balance, the process may not work or the mediator may need to meet with each party separately which is known as a caucus. The mediation process is like a river, it winds its way towards its destination, and no one knows exactly where that is when it starts out. That is because the process is very much alchemical and organic. It is a wonderful, safe opportunity to get at the real issues and at the heart of the problem.

4. This outcome of course requires rigorous honesty and a willingness on all the parties to try and resolve the issues. I have seen in many mediations how people shift their attitudes and perspectives when given a chance to do so. One of the main issues is the ego tries to defend itself so often, which suggests that the person would rather be right than happy. However, as the process influences and affects everyone on a multifaceted level, including emotionally, physically and spiritually, some extraordinary insights emerge.

2.2 The Vice-Chair and Friend of the Council

Presently, the Council has only one neutral member, the Chairperson.

What has become apparent during this Inquiry is that looking at the issues from a non-aligned perspective is a crucial factor in the work of the Council. The Inquiry has been left with the impression that, if there is not a better balance between the individual or constituency interests and those of the whole organization, progress will be slowed.

By increasing the number of neutral parties from one to two, the common good is more likely to receive the attention it deserves. To this end, another position, Vice-Chair and Friend of the Council, should be included on the Council. In this role, the individual should ensure that the issues of the minorities, including women, receive the attention they are entitled to in the Council's work.

The minority group issues within the RCMP membership should be proactively addressed by the Council. This should be led by the Vice-Chair and friend of the Council.

Sometimes structural procedural or combinations of internal systems can act in a unique fashion to effectively discriminate against certain groups with respect to their salaries. The Council should be aware of this possibility and remain vigilant in insuring these issues are addressed in the Council effectively.

2.3 The First representative of the Commissioner

The first representative named by the Commissioner in 1997 was the Deputy Commissioner Curt Allen whose attention and contribution was appreciated even by the SRRs on the Pay Council. Since then, this position on the Council has been held by numerous individuals whose contributions varied dramatically, from being seen as highly constructive to less than satisfactory.

The principal complaint has been the high turnover in the number of individuals who have acted as the first representatives of the RCMP who sat on the Council. They had an average length of service on the Pay Council of less than two years. This is compared to the representatives of the SRR program, who had an average term of five years.

The high turnover of the first representative was detrimental to the need for continuity, for preservation of Council memory and created a loss of subject-matter expertise.

The demands of time on the CHRO have been considered extreme, making it difficult on some occasions for the holder of this office to attend the entire meeting. The question arises as to whether it should be the CHRO who acts as the first representative. However, this is an internal RCMP management question.

2.4 The Second Representative of the Commissioner

For the past fifteen years, the second representative of the Commissioner has been a retired Assistant Commissioner, Lowell Thomas. With sound interpersonal skills and a long career in the RCMP, he contributed substantially to the work of the Council.

The issues that arose most often from the interviews conducted were not directed at personalities but rather at the specific competencies required in this position for the future, given the present context.

There was a perceived need for the participation of an individual with a proven track record, from outside the organization, who brings external expertise in the field of economics with

respect to the development of innovative and practical solutions to workplace issues in complex organizations.

2.5 The SRR

The SRRs of the members during the first and the second terms on the Council were Kevin MacDougall and Don Taylor, respectively. During the third term of the Council, Gord Dalziel has been the member representative of the SRR Program. Their work on the Council was overall perceived as constructive. However certain stakeholders expressed frustration at the repeated and unrelenting insistence on the members' compensation being matched to the top three police organizations in the police universe to the exclusion of other data. Expressed during this Inquiry, was also the perceived lack of engagement with the different interests of the minorities which exist in the membership, including women.

The dissemination by Council but also by the SRRs of the work of the Council is a fundamental and important matter. The Inquiry heard that the membership would like to see more effort put in to the communication of the work and accomplishments of the Council.

2.6 The SRR Executive Compensation Specialist

The present structure of the Council includes that the members' second representative be an expert in executive compensation given the complexity of the issues. This member of the Council is to provide the professional expertise to the SRR representatives regarding workplace issues.

This inclusion of the expert has been unanimously appreciated by those involved with the work of the Council. The expertise of the three individuals who have held this position, have had a significant and positive impact on the substance of the exchanges amongst the different members of the Council. Senior officers and the SRR program felt that the presence of the compensation specialist resulted in a more informed and constructive atmosphere.

2.7 Participation Upon Request of the Chairperson

It has become obvious during the Inquiry that there are, from time to time, issues that arise that require the participation of individuals or representatives of a constituency within or external to the RCMP. They may include the representatives of the Treasury Board, the contracting provinces and territories, or other relevant stakeholders, such as the RCMP women's advisory group. It is important to exchange the respective insights of these stakeholders before decisions are arrived at and while their ideas and perspectives are not yet cast in cement.

As Gareth Morgan states:

There is a well-known law in cybernetics- the law of requisite variety- which states that for any system to adapt to its external environment, its internal controls must incorporate the variety found in that environment. If one reduces the variety inside, the system is unable to cope with the variety outside. The point seems an obvious one but in fact many organizations try to function by doing the reverse. For example, in establishing planning teams or project groups, organizations often filter diversity by removing potentially disruptive elements; selecting people who think alike, proceeding quickly in the absence of awkward members, and so on. The process results in quick plans and actions, but these soon meet resistance in the face of reality. Creativity thrives on the tension created by diversity, and it is essential that steps be taken to ensure that organizations build enough tension and variety into processes where innovation is required¹⁷⁷.

It might involve inviting members of other police forces who have developed innovative approaches to finding solutions to common workplace issues and goals. It may involve inviting subject-matter experts from a learning institution such as the Canadian Police College or experts from forensics or individual members who have carried out successful innovations. The original report regarding Pay Council proposed that Treasury Board representatives participate on the Pay Council as follows:

In December 1994, the RCMP requested that Stikeman Elliott review the recommendations contained in their earlier report and provide comments with respect to the changes they would suggest of the RCMP were granted a form of separate employer status. The Stikeman Elliott report, prepared by A. Edward Aust, again recommended the creation of a council to facilitate the compensation process and to encourage a more orderly, independent, transparent and professional approach to compensation within the RCMP. However, given the reluctance of TBS to participate in the process, Stikeman Elliott recommended that the council be composed of a Chairperson and four members, two appointed by the Commissioner and two appointed by the DSRR caucus.¹⁷⁸

The Brown Report also contained the following recommendation:

Recommendation 42 – Contract Partner Participation

¹⁷⁷ **Morgan, Gareth**, *Riding the Waves of Change, Developing managerial Competencies for a Turbulent World*, Jossey-Bass Publishers 1988, ISBN 1-55542-093-1, p. 77.

¹⁷⁸ Royal Canadian Mounted Police Pay Council, 1997 Annual Report, June 16th, 1997, p. 196.

Headquarters should give greater weight to the views and priorities of contracting authorities and should involve them in a more meaningful way in decisions that have an impact on their jurisdictions.¹⁷⁹

We believe that it would be beneficial for all parties that two representatives from Treasury Board Secretariat participate in the first stage of the Council's work (without in any way renouncing the authority of the Treasury Board to determine the work conditions under its jurisdiction) prior to the subsequent SRR submission to the Treasury Board for changes to compensation.

The subject of salary, benefits and allowances paid to RCMP members and the process by which they are determined are relatively complex when compared to the private sector. The various considerations and an appreciation of multiple constituencies with different interests in some cases, requires an intersection for the various processes and stakeholders involved to meet.

Morgan explains the advantage of working around the negatives before a decision is made, rather than fighting the opposition afterwards, which former approach can avoid expensive delays:

It is often much more effective to begin a decision-making process by casting a broad net, involving unusual people, exploring unusual ideas, and being open to the influence of variety, rather than forcing a narrow point of view or pet approach that “ must be made to succeed at all costs”¹⁸⁰.

Typically in the past, while there has been informal consultation between various representatives at different levels of each organization represented on Council, the Inquiry has been informed that often crucial aspects or considerations fall through the cracks. Also, given the turn-over in certain positions, an institutional memory on Council sometimes disappears.

To keep the creation of the Council in perspective, it is useful to remember the history of compensation within the RCMP and the challenges that had to be overcome. The attempts in 1974 by a joint TBS/RCMP Advisory Group on Compensation established principles and guidelines to assist their interaction concerning this subject. Unfortunately:

In reality, the principles and guidelines had little, if any, impact on the RCMP/TBS relationship. The Advisory Group met only 14 times over a period of six years. There was a fundamental difference of opinion between TBS and the RCMP as to how the Advisory Group should function and the transfer of authority for the compensation system to the Force was never translated into specific policy. Frustration grew as time went on. The Force believed that there was nothing wrong

¹⁷⁹ *Rebuilding the Trust, Report of the Task Force on Governance and Cultural Change in the RCMP* (The Brown Report), Submitted to Minister of Public Safety and President of the Treasury Board, December 14, 2007. <http://www.publicsafety.gc.ca/rcmp-grc/fl/tsk-frc-rpt-eng.pdf>

¹⁸⁰ **Morgan, Gareth**, *Riding the Waves of Change, Developing managerial Competencies for a Turbulent World*, Jossey-Bass Publishers 1988, ISBN 1-55542-093-1, chapter 6 p. 77.

with the principles and guidelines for the advisory group, but believed there was a lack of desire among TBS representatives to work together and to resolve the issues.¹⁸¹

Having the regular participation of representatives from the Treasury Board (Secretariat) could provide a meaningful contribution to the deliberations of the Council. This would provide for a greater exposure for the Treasury Board Secretariat in order to understand the assumptions, beliefs and values of the RCMP representatives that underlie their workplace goals and their culture.

The 1993 Pay Council Report recommended in the last line of recommendation 116 that “*The participation of RCMP management and the Treasury Board Secretariat are clearly required*”.

The 1993 Pay Council Report also put forth the following recommendations:

121. We propose that the Council have seven members. Two members will be named by the Commissioner from the management ranks of the RCMP; two members of the DSRR Pay Committee will be selected by the DSRR caucus and two members will be named by the President of the Treasury Board. The seventh member will be the Chairperson who will be independent and therefore not associated nor perceived to be associated with either the RCMP or the Treasury Board. When the Council hears issues with respect to compensation matters over which the Commissioner has been given authority, the Council of seven will sit less the two representatives of the Treasury Board.

126. It is our recommendation that the Treasury Board appointees be selected by the President of the Treasury Board. Their terms would be at the pleasure of the President of the Treasury Board. It would be our strong recommendation that one of the appointees be the Director of Compensation and Human Resource Policies Management, Canadian Forces and RCMP. The other appointee could be, but not necessarily, from the same section within the Treasury Board Secretariat. We wish to stress that the active participation of senior and experienced civil servants from the Treasury Board in the proceedings of the Council will be an extremely important aspect of the Council's functions. Indeed, it will be crucial to the process that as Council members, these officials will have an understanding of the compensation issues within the RCMP and will be able to address those issues within the overall context of the public service and the broad compensation policies exist from time to time. With respect to these issues dealing with compensation matters that have been delegated to the Commissioner, the Council will not require the participation of the two representatives selected by the Treasury Board. At the same time, and as we have stated earlier in this report, the RCMP deserves separate consideration and special attention relative to its conditions of employment. To summarize, the national, provincial and municipal mandate of the RCMP and the demands places on the Force to fulfill such a variety of obligations distinguishes it from other sectors of the public service, special treatment is justified in light of all these considerations.

136. With all participants actively involved in the development and determination of particular issues as well as recommendation's to the Treasury Board, it would be our expectation that the

¹⁸¹ *Royal Canadian Mounted Police Pay Council, 1997 Annual Report, June 16th, 1997, p. 1.2.*

Treasury Board could place a heavy reliance upon the recommendations made to it. This in no way derogates from the jurisdiction of the Treasury Board since it will still be capable of approving or denying a recommendation. Accordingly, the wide discretion enjoyed by the Treasury Board will not be fettered in any manner whatsoever. The strength of our proposal is that it will prevent parties from attempting indirect approaches to accomplish their ends. With all participants subscribing to and respecting the process, it will permit everyone to require an adherence to it.

141. It is important that Treasury Board members be exposed and participate in the full range of discussions concerning the issues before the Council while such positions are “fluid”. In order to discourage firm position bargaining and encourage alternative resolution of disputes, such representatives should have the necessary training in employment relations.

Unfortunately, the Treasury Board, through the Treasury Board Secretariat, informed the Commissioner of the day that it was not prepared have representatives become part of the Pay Council.

There are intermittent exchanges between officials of the Treasury Board Secretariat and the Council especially through the Research and Support Branch manager and analysts. In addition to these meetings, there is communication between the Commissioner, senior managers and senior representatives of the Treasury Board Secretariat.

Given, however, the Supreme Court’s interpretation¹⁸² of the right of association under the Charter, which includes the derivative right to consultation in good faith regarding workplace goals, the issue now arises as to how to coordinate these rights when there are two separate institutions that have responsibility for different work conditions of one group of workers.

While the final decision with respect to these work conditions rest with the Treasury Board and the Commissioner, it is necessary to consider that a specific workplace goal pursued by the SRRs may involve or affect work conditions which are the responsibility of more than one of the institutions.

Even in the case where the workplace goals pursued by the SRRs would affect only the work conditions under the jurisdiction of one of the institutions (either Treasury Board or the RCMP), the Inquiry recommends that, as a first step, workplace goals pursued by the SRRs should be explained to both the representatives of the management of the RCMP and the two representatives designated by the Treasury Board to attend Council during the consultations.

¹⁸² *Dunmore v. Ontario (Attorney General)*, 1997 CanLII 12214 (ON SC); *Delisle v. Canada* (Deputy Attorney General), [1999] 2 SCR 989; *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27, [2007] 2 SCR 391; *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, [2011] 2 SCR 3.

Fortunately, there would appear a serious willingness on the part of the Treasury Board to participate and collaborate in innovative forums. On February 7, 2012 the office President of the Treasury Board in Ottawa issued the following press release:

The Honourable Tony Clement, President of the Treasury Board and Minister responsible for FedNor, today spoke with public servants gathered at the Public Sector Quality Fair to discuss opportunities to modernize the way government works through cost-saving measures and the Open Government initiative.

"This is our chance to seek out new approaches to innovative and collaborative problem solving," said Minister Clement. "What we do in the coming weeks and months will have a lasting impact for the years to come."

The theme of this year's Quality Fair is: Collaboration, Innovation and Excellence. Participants from federal, provincial, territorial, and municipal governments are learning and sharing best practices that drive Canada's innovation and excellence in the public sector.

"This forum is an important venue for ideas and collaboration," said the Minister. "Such knowledge sharing can only lead to better program delivery and help to connect government and citizens better than ever¹⁸³."

One of the roles that the Council may now play is to bridge the misunderstandings between the cultures of the RCMP and that of the Treasury Board. This will require a deeper and better understanding of the respective cultures, values, assumptions reasoning, perception and priorities than is currently in place. This will take substantial effort.

During this Inquiry, as per the mandate, contact was established with the co-chair of the Contract Management Committee which facilitates the relationships between the Provinces and Territories who contract for RCMP services.

The exploratory conversations were most constructive and the contracting parties expressed a willingness to participate in the Council's exchanges concerning salary, benefits and allowances.

Authors Pfeffer and Salancik in *The External Control of Organizations* explain the need for inter-organizational structures such as are being proposed here:

On the one hand, future adaptation requires the ability to change and the discretion to modify actions. On the other hand, the requirements for certainty and stability necessitate the development of inter-organizational structures of coordinated behaviors –inter-organizational organizations. The price for inclusion in any collective structure is the loss of discretion and control over one's

¹⁸³For more information, contact the Press Secretary, Office of the President of the Treasury Board and Minister responsible for FedNor.

activities. Ironically, to gain some control over the activities of another organization, the focal organization must surrender some of its own autonomy.

Organizations seek to avoid dependencies and external control and, at the same time, to shape their own context and retain their autonomy for independent action. The dilemma between the maintenance of discretion and the reduction of uncertainty leads to the performance of contradictory activities.¹⁸⁴

As such, in the first stage of consultations, in the presence of the representatives of the Treasury Board, we suggest that two representatives of the Provinces and the Territories be invited when compensation issues are addressed. The differences in the levels of resources of the various parties who contract for RCMP services are also a factor that must be considered, hence the recommendation of two representatives. The purposes would include obtaining the views of the Provinces and Territories with regards to these matters while exposing them to the perspectives and considerations of the other parties participating.

It was understood that such participation by the provinces and territories would not expressly or implicitly interfere with their rights and obligations under their agreements with the government of Canada. The inclusion and obtaining the views of the contracting parties in discussions which have such significant cost implication would appear to be basic.

2.8 The Other Contributing Parties

From time to time, at the discretion of the Chairperson, individuals or representatives of groups may be invited to inform the Council with respect to their work, specific field of knowledge, or experience, or to explain the perspective of a particular constituency.

This prerogative is important as it allows for a flexible approach to gaining the necessary insight of particular matters in order to deepen the Council's understanding and substantiate and improve its capacity to formulate recommendations.

Given the complexity of the social, economic and legal issues to be addressed, DeLord, Burpo, Shannon and Spearing in their book *Police Union power, Politics, and Confrontation in the 21st Century*, recognize the need for a greater cross-section of participants beyond representatives of management and labor. They suggest multiple stakeholders should participate in discussions with a National Labour Management Council, including various levels of governments with a concern

¹⁸⁴ Pfeffer, Jeffrey & Salancik, Gerald R., *The External Control of Organizations, A Resource Dependence Perspective*, Harper & Row Publishers 1978, ISBN 0-06-045193-9, p. 261:

about policing. They recommend the inclusion of a wider spectrum of society in discussions, including “academicians, researchers, criminal justice reformers, and community activists”¹⁸⁵.

2.9 The Council’s Research Support Services Branch

These services are headed by the manager of the Research and Support Services Branch. This person should attend and participate in all Council work. The manager serves as a coordinating and facilitating function for all of the operations of the Council. It is also important that the Council be provided with pertinent information concerning the relationships with numerous police organizations and professional actuarial organizations whose services may be required.

The credibility of the Council and its image as credible are paramount if its work is to be respected.

However, the Inquiry learned that it is considered inappropriate that the manager of the Research and Support Services Branch report to the CHRO. As this person should not directly or indirectly, in his or her neutral role, be dependent on the sole approval of one of the parties who is actually involved or whose department is directly concerned with the work of the Council.

The work of this group requires maintaining relationships with numerous police organizations and interacting with professional organizations. The multiple and detail-filled issues involved with total compensation require both continuous, up-to-date information and that the numerous comparative studies on total compensation are available on a timely basis.

This group’s research has, in the view of the past and present members of Council, significantly improved and informed the Council’s work. Perhaps as important, in addition to providing the required neutral fact-finding, the group’s unbiased research has set new standards for the quality of information expected by the Council as it fulfills its mandate.

The importance of such a research capacity was highlighted by the Task Force on Governance and Cultural Change:

Rebuilding the Trust, 2007, **Recommendation 33 – Research**

¹⁸⁵ DeLord, Ron & Burpo, John & Shannon, Michael & Spearing, Jim, *Police Union power, Politics, and Confrontation in the 21st Century*, Charles C. Thomas, Publishers, Ltd, 2008, ISBN 978-0-398-07820-1, p. 247.

The RCMP must rebuild its research capability in order to provide members of the Force with an opportunity to explore developments in law enforcement outside of the RCMP and stay abreast of modern policing methods¹⁸⁶.

2.10 The Ex Officio members

Given this Inquiry's recommendation regarding a broader mandate for the Council, the Commissioner and one of the two SRR Executives should be Ex Officio members of the Council.

Recommendations re: Structure

RECOMMENDATION 7

That the representatives of the RCMP and the SRRs choose, by mutual consent, a member of the RCMP who is recognized for his or her impartiality, conciliatory skills, insight, and understanding of workplace issues to serve as Vice-Chair and friend of the Council.

It is the Inquiry's recommendation that the present manager of Research and Support Services Branch who already acts independently should be appointed to this role of Vice-Chair and "friend of the Council", at least initially. This would greatly facilitate the transition from the Pay Council to the RCMP Professional Relations Council. Of course, it would require the mutual consent of the representatives of the RCMP management and the SRRs. Obviously, any replacement of the manager would require an evaluation as to whether or not such an individual has the capacity in addition to acting as a manager, to also act as Vice-Chair.

¹⁸⁶ *Rebuilding the Trust, Task Force on Governance and Cultural Change in the RCMP*, December 14th, 2007 submitted to the Minister of Public Safety and President of the Treasury Board.

RECOMMENDATION 8

To ensure that the issues of minorities in the workplace receive the appropriate attention, the position of Vice-Chair should also act as a “friend of the Council” to ensure that the voices of minority groups in the organization are heard.

RECOMMENDATION 9

That the Council, through the Chairperson, extends an invitation to the co-chair of the contracting parties within the Contract Management Committee to provide two representatives to participate in the Council’s exchanges concerning salary, benefits and allowances. These exchanges would take place prior to any direct consultations concerning these matters between the SRRs and the representatives of the Treasury Board.

RECOMMENDATION 10

The Vice-Chairperson’s role should include proactive monitoring to ensure, through sampling and surveys, that minority groups have their issues addressed by the work of the Council.

Upon reaching agreement with the Chair, the Vice-Chair shall direct the research and the support branch of the Council to this end.

RECOMMENDATION 11

That the RCMP’s second representative be chosen from outside of government, including the RCMP, and have a background in economics, strong interpersonal skills and proven problem solving skills in circumstances similar to the work of the Council.

RECOMMENDATION 12

That an invitation be extended to representatives of a constituency within or external to the RCMP when that constituency is affected by the Council's deliberations. Such invitation should be extended at the discretion of the Chairperson of the Council.

RECOMMENDATION 13

That the offices of the Council should include an appropriate meeting room and one caucus (syndicate) room. The decorum should be appropriate for the nature of the work to be undertaken.

RECOMMENDATION 14

To ensure the independence of the work of the Council and to avoid any real or perceived bias on their part, the manager, staff and analysts supporting the work of the Council should not report solely to the management of the RCMP. To ensure transparency, independence and the neutral roles of the manager and the analysts in the Research and Support Branch of the Council, they should report to with respect to administrative matters to both the senior member of the SRR executive and to the Commissioner.

RECOMMENDATION 15

The independence of the work of the Council should be demonstrated not only by the actions of the Council but also by its physical location. We recommend that offices be located off-site from the RCMP buildings and located as close as possible to the library of the Canadian Police College or another suitable library.

RECOMMENDATION 16

The respective terms of appointment of members to the Council should be staggered to avoid the abrupt loss of Council history and experience.

RECOMMENDATION 17

The proven, integrity and abilities of the neutral Chairperson to lead, facilitate, encourage collaborative approach to problem-solving are of extreme importance. The recruitment of such an individual must find appropriate strategies when necessary to seek out such individuals rather than simply wait for applications. Individuals with these qualities are rare and most often extremely busy.

RECOMMENDATION 18

Given this Inquiry's recommendation for a larger mandate for the Council, the Commissioner and one of the two SRR Executives should be Ex Officio members of the Council.

RECOMMENDATION 19

Each member of the Council should have their existing position description modified to take into account the recommendations of this report. The description should include:

- The identification of the position on the Council**
- The qualifications and expertise of the respective members of the Council**
- The process for the appointment of the respective members of the Council**
- The responsibilities of the respective members of the Council**

- **The duration of appointments of the members of the Council (staggered if possible so as to provide continuity for the work of the Council)**
- **The removal of a member of the Council, other than at the expiry of their term, by a decision of the Commissioner in the case of the representatives of the RCMP and by a decision of the SRR Program in the case of the SRRs.**
- **The estimated workload of the respective members of the Council in terms of days per year**
- **The compensation in the case of the members of the Council external to the RCMP should be mentioned**
- **The expenses of the representatives of other constituencies should be borne by their respective organizations**

3. The Operations of the Council

3.1 The Council's Operations as Part of a Larger Process

When the Pay Council was first created in 1997 entering into a dialogue about compensation recommendations in an independent forum was a significant step for the Force. To have representatives of the members carry on such exchanges with a Deputy Commissioner in the presence of a neutral chairperson was novel for all the parties involved.

According to those intimately involved in the operations of the Council, it has provided a progressive forum. Some 15 years after its creation, however, the Council, in their view, needs to be reformed.

The different steps of the process used in determining compensation in the RCMP are explained by the Ontario Court of Appeal in *Mounted Police Association of Ontario v. Canada*:

[19] The Treasury Board has the ultimate authority to establish pay and allowances for RCMP members. Before exercising that authority, Treasury Board receives the recommendations of the RCMP Pay Council. The Pay Council was established in May 1996 to provide an alternative to the traditional collective bargaining model set out in the PSLRA. It has five members, made up of two SRRs, two representatives of management and an impartial chair. Its mandate on issues concerning pay and benefits is broad. Before making its recommendations, it solicits the views and input of the membership of the RCMP. Its recommendations are then presented to the Commissioner, and if they are accepted by the Commissioner, they form the basis of a Treasury Board submission. The submission is first reviewed by the Minister of Public Safety, and if the Minister approves it, it is presented to Treasury Board on behalf of the Commissioner.¹⁸⁷

The principle operations of the Council at this time are:

- Making recommendations to the Commissioner on the appropriate pay and work conditions for both active regular members and certain civilian members up to and including the rank of Superintendent or equivalent.
- Maintaining relations and sharing information with the representatives of the Treasury Board and other relevant internal and external stakeholders.
- When work must be started on the next pay package, the management and member representatives on Council exchange views on their respective priorities for the next pay package.

¹⁸⁷ *Mounted Police Association of Ontario v. Canada*, 2012 ONCA 363 (CanLII), Justices Doherty, Rosenberg and Juriansz, para. 19.

- The management representatives and the SRRs collaborate to reach a consensus on priorities.
- Research analysts are then asked to commence relevant background research, including monitoring recent settlements both in the police universe and the federal public service, as well as any relevant legislation that may impact pay (e.g. wage/expenditure restraints).
- Research analysts also conduct total compensation analysis, including market comparisons and compensation projections to compare where the RCMP stands against other institutions.
- Based on the results of this analysis, the Council formulates draft recommendations for compensation. These recommendations attempt to balance the preferences of members (expressed by the member representatives) with the priorities and operational requirements of the Force (expressed by the management representatives).
- In its recommendations, the Council also takes into consideration the Treasury Board's *Policy Framework for the Management of Compensation* and the four pillars used by the Treasury Board for making compensation decisions.
- A business case, in the form of a draft Treasury Board submission, is then prepared and provides data and arguments to substantiate the Council's recommendations and requests for approval.
- The draft Treasury Board submission is then forwarded to RCMP Corporate Services to be costed.
- Before it is finalized and sent to the Commissioner, the draft business case is sent to Treasury Board Secretariat ("TBS"). The Council and its research analysts consult and liaise frequently with TBS staff throughout this process. The Council and their analysts provide TBS staff with extensive additional analysis to assist them in reviewing and evaluating the Treasury Board submission. The Council responds to TBS concerns by amending proposals in the submission in a manner that would be more acceptable to TBS yet still satisfies RCMP priorities.
- Once the consultations with TBS are complete and the submission is translated, it is sent in its final form to the Commissioner.

It is recommended in this Report that the SRRs consult directly with the representatives of the Treasury Board after first exchanging views with the Council. Given the different cultures of the two bodies, this will be a challenge. There are likely to be strong differences between the opinions of the Treasury Board representatives and the SRRs, about what constitutes comparable work sectors and compensation rates.

Bridging the misunderstandings and misconceptions can be arduous and prolonged. The representatives of Treasury Board, through the TBS, have a long history of negotiation with the numerous collective bargaining units in the public service.

The Treasury Board has far greater negotiating power than the various bargaining units with which it negotiates. Furthermore, Parliament can, through legislation, render inapplicable any term or condition that exists.

The members of the RCMP often work thousands of kilometers away from the office towers that house the Treasury Board and where their compensation is decided. They expressed to this Inquiry a sense of alienation towards the Treasury Board and officials in the secretariat, who work for the TBS.

An enhanced understanding by the TBS and SRRs of each other's culture will be required for the successful resolution of conflicting expectations.

3.2 Modifying the Activities of the Council

Given the recent decisions of the Supreme Court of Canada interpreting the right of association under section 2(d) of the Charter, the SRRs have the right to consult with the Treasury Board regarding the work conditions the Treasury Board is responsible for, including salary, benefits and allowances.

This does not, however, lead to the conclusion that the SRRs should no longer consult with the representatives of the RCMP with respect to those matters. The Commissioner and representatives have responsibilities that require a full understanding of compensation that have an impact on the operations of the RCMP.

While this direct consultation should take place between the SRRs and the Treasury Board representatives, it should be preceded by a preliminary stage of exchanges between the SRRs and the Council to ensure that the management of the RCMP, two representatives of Treasury Board Secretariat and two representatives of the provinces and territories are aware of their intentions and are afforded an opportunity to exchange views as regards their workplace goals that relate to salary, benefits and allowances under the jurisdiction of Treasury Board.

The Inquiry has concluded that it is necessary to share the nature and reasons for changes to these benefits with the Council to ensure that, prior to a subject of this importance being solely dealt with Treasury Board in isolation from all of the other workplace conditions, it is first discussed in the presence of the whole Council.

While the RCMP and Treasury Board have responsibility for different work conditions in the RCMP, it is advisable, from the perspective of sound management practices, for them to

approach workplace issues together. This will allow for the opportunity, in an initial stage, to ask all relevant questions and share general perspectives.

We repeat that it should be understood that the designation of two representatives by the Treasury Board to attend this stage of the discussions would not, directly or indirectly, constitute approval or agreement to change the work conditions over which they have jurisdiction and which are discussed at such meetings. For greater clarification, it would be during a subsequent stage that the SRRs would consult directly with the representatives of the Treasury Board, and that the Treasury Board would exercise its authority to accept or reject any proposals or submissions by the SRRs.

Work relationships have the potential to enrich our life, or to make it intolerable. A work relationship consists of many elements. Some of these include extrinsic rewards such as, salary, benefits and travel. Other elements are intrinsic, such as personal development through exposure to new situations, being part of a group with a larger purpose, camaraderie, recognition and learning.

The traditional, often simplistic, bargaining and superficial rhetoric used by employers and by the representatives of the workers, can put the future of an organization at risk if it does not reach a more constructive and informed level of dialogue.

For example, progress would be difficult if the Treasury Board were to focus solely on what is paid to other federal public servants or if the SRRs were to insist on earning the same as a another police organization in the police universe without considering the numerous other factors at play.

It is the view of this Inquiry that, given the present state of organizational relations and as discussed in the Mandate section of this Report, limiting the exchanges between the RCMP representatives (or Treasury Board for that matter) and the SRRs to solely compensation conditions would reduce the chances of achieving a harmonious workplace.

3.3 Fostering a Positive Environment for the Council

Presently, the Council meets monthly except in July. It might be more efficient, to establish these meetings as issues arise rather than on a regular basis.

Sy, Barbara and Daryl Landau express what is necessary to shift from attacking each other to solving a problem collaboratively and creatively:

Conflict invites opposition. People generally view the resolution of a conflict as being an either-or proposition: either one party wins or the other one does. All the creative energy goes into outdoing each other... People feel a lot more creative when they see themselves working on a problem with colleagues than when they are resolving conflicts with adversaries... This approach requires some safeguard for parties that are initially distrustful, but the rewards for shifting from competition to collaboration can be considerable.¹⁸⁸

The authors go on to explain that without collaboration, there is no sharing of the relevant information required to solve the complex problems. Second, they argue that the waste of energy used in criticizing the other party can be shifted to exploring how the objectives of all parties can be reconciled. They also point out that when cooperation replaces competition, it can result in more efficient and cost-effective solutions. Finally, working together can produce creative results. As Bruce Mau writes, “Ideas need a dynamic, fluid, generous environment to sustain life”.¹⁸⁹

Given the context of the Council, it was the intention to adopt an interest-based approach as described by Gary T. Furlong in *The Conflict Resolution Toolbox, Models & Maps for Analyzing, Diagnosing and Resolving Conflicts*.¹⁹⁰

Interest-based approaches

This is an approach that tries to reconcile or find a solution that meets the interests of the parties. Interests refer to the parties’ wants, needs, hopes, and fears. Interest-based approaches are or tend to be more consensual, and succeed when both parties get enough of their interests met to agree on a solution.

Types of Outcome: Win/Win

Process Examples: Most types of negotiation, mediation, joint problem solving, mutual gains bargaining, brainstorming.

¹⁸⁸ Landau, Sy & Landau, Barbara & Landau, Daryl, *From Conflict to Creativity, How Resolving Workplace Disagreements Can Inspire Innovation and Productivity*, Jossey-Bass 2001, ISBN 0-7879-5423-3.

¹⁸⁹ Bruce Mau Design, *An Incomplete Manifesto for Growth*. This design manifesto was first written by Bruce Mau in 1998, articulating his beliefs, strategies, and motivations. The manifesto outlines BMD's design process. <http://www.brucemaudesign.com/4817/112450/work/incomplete-manifesto-for-growth>.

¹⁹⁰ Furlong, Gary T. , *The Conflict Resolution Toolbox, Models & Maps for Analyzing, Diagnosing and Resolving Conflicts*, Wiley 2005, ISBN 0-470-83517-6, at p. 110.

Rights-based Processes

This is an approach that is characterized by parties asserting or focusing on the superiority of one party's right over the rights of the other party. Rights come from many sources, including laws, statutes, conventions, past practices, policies, and contracts. Rights-based processes tend to be adversarial and focus on promoting one's own rights while minimizing and delegitimizing the other parties' rights.

Type of Outcome: Win/Lose

Process Examples: Litigation, arbitration, adjudication, tribunal decision, neutral evaluation, some types of negotiations, formal investigations.

Power-based Processes

This approach is characterized by parties bringing to bear all the resources they have at their disposal against the other party in an attempt to win. Typically power-based processes are highly adversarial, and are sometimes applied in spite of the rights of the parties.

Type of Outcome: Lose/Lose (although sometimes Win/Lose)

Process Examples: Threats, intimidation, physical force or violence, strikes or lock-out, unilateral decision-making, some types of negotiations, "self-help," and voting.¹⁹¹

From the interviews conducted during this Inquiry, it has become evident that the parties on the Council have not always been able to maintain an interest-based approach as described above.

Another limitation would appear to originate during Council meetings from the tendency to reason deductively. As Gary Furlong writes, the usefulness of deductive reasoning is restricted "to exploring the implications of what we already know or assume to be true. ...When we want to generate genuinely new knowledge, we must rely upon inductive reasoning."¹⁹²

Authors Weick and Sutcliffe describe how high-reliability organizations practice a form of organizing that nips potential crises in the bud. They explain how expectations can cause problems for the organization unless it creates an infrastructure that continually tracks small failures, resists simplifications, remains sensitive to operations, maintains capabilities for resilience and takes advantage of shifting locations of expertise.

They attribute the success of the high-reliability organization in managing the unexpected to their determined effort to act "mindfully". They define this as being organized in such a fashion so as to "notice the unexpected in the making and halt its development." Mindful is defined as:

¹⁹¹ **Furlong, Gary T.**, *The Conflict Resolution Toolbox, Models & Maps for Analyzing, Diagnosing and Resolving Conflicts*, Wiley 2005, ISBN 0-470-83517-6.at p. 110.

¹⁹² **Hughes, William, & Lavery, Jonathan**, *Critical Thinking, An Introduction to Basic Skills, Fourth Edition*, Broadview Press 2004, ISBN 1-55111-573-5. [Emphasis added].

striving to maintain an underlying style of mental functioning that is distinguished by continuous updating and deepening of increasingly plausible interpretations of the context, what problems define it, and what remedies it contains.¹⁹³

3.4 The Meaning of Good Faith in Consultations

During the inquiry we learned that members question their SRRs' ability to defend member's interests and influence the outcome of consultations with respect to compensation.

This was also supported by a 2010 survey on members' concerns:

The main areas of concern with greatest importance are the SRRP's ability to influence management's decisions (50%), effectively negotiate pay increases (56%), influence pay levels (50%) and benefits (50%). Dispute resolution as an area for improvement is identified more strongly among higher rank - Inspectors/Superintendents – 40% vs. 31% overall.¹⁹⁴

The recent rollback of previously agreed increases by the Treasury Board has shaken many members' faith in the process by which pay benefits and allowances are determined. In June 2008, after consultation with the Pay Council, the Treasury Board approved a 2% wage increase and a 1.32% market adjustment for the RCMP for 2008, a 2% wage increase and a 1.5% market adjustment for 2009, and a 2% wage increase for 2010. On December 11, 2008, without consulting the Pay Council, the Treasury Board lowered the wage increases to 1.5% for all three years, and cancelled the market adjustments for 2009 and 2010.

The SRR Program has already contested what it considered to this abuse of the members' Charter right to association by the Treasury Board before the Federal Court of Canada, which rendered a decision in *Meredith v. Canada (Attorney General)*¹⁹⁵. The Court held that the Treasury Board's decision of December 11, 2008 violated the RCMP members' Charter rights. The application for judicial review was allowed and the Treasury Board's decision of December 11, 2008 was quashed. The Treasury Board's decision did not constitute a breach of contract and no claim for damages arose.

¹⁹³ **Weick, Karl E. & Sutcliffe, Kathleen M.**, *Managing the Unexpected, Resilient Performance in an Age of Uncertainty*, John Wiley & Sons, Inc. 2007, ISBN 978-0-7879-9649-9, p. 18.

¹⁹⁴ The Staff Relations Representative Program (SRRP), Satisfaction and Needs Study, Report of Findings, March 17th to April 6th, 2010, Prepared for: Staff Relations Representative Program (SRRP) of The Royal Canadian Mounted Police Prepared by: Pollara Inc. , p. 6.

¹⁹⁵ *Meredith v. Canada (Attorney General)* 2011, ([2011] F.C.J. No. 948, 240 C.R.R. (2d) 204, Docket T-50-09). This decision has been appealed to the Federal Court of Appeal, who which has heard the matter but not yet rendered its judgment.

In arriving at this conclusion, Justice Heneghan cited with approval the reasoning of Justice Danielle Grenier of the Superior Court of Quebec, in *Confédération des syndicats nationaux c. Québec (Procureur général)*.¹⁹⁶

50 examples of state action that constitutes substantial interference with subsection 2(d) rights... include the failure to consult, the refusal to bargain in good faith, the withdrawal of important topics for negotiation, and unilateral cancellation of negotiated terms.

Justice Heneghan further held as to what action constituted interference with section 2(d) of the Charter by the Treasury Board:

73 In *Fraser*, the Supreme Court of Canada held that all employees, not just those under a Wagner style collective bargaining regime, have the right to make collective representations and have those representations considered in good faith; see paras. 42, 46-48. It follows that the Pay Council process is important and should be afforded the protection of subsection 2(d) of the Charter.

86 In my opinion, this limited engagement [by the Treasury Board to only consider certain issues] demonstrates that the Treasury Board withdrew the issue from consideration and refused to negotiate on a good faith basis. The unilateral cancellation of a previous agreement also constitutes interference with subsection 2(d) rights.

Since the creation of the Council in 1996-1997, the Supreme Court of Canada defined an association of employee's rights emanating from section from 2 (d) of the Charter in a number of decisions.

In 2011, Chief Justice McLachlin and Justice LeBel, writing for the majority of the Supreme Court of Canada in the case of *Ontario (Attorney General) v. Fraser*, stated that:

[99] ... the right of an employees' association to make representations to the employer and have its views considered in good faith is a derivative right under s. 2(d) of the Charter, necessary to meaningful exercise of the right to free association.

In *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, Chief Justice McLachlin and Justice Lebel discuss good faith in the following terms:

100 A basic element of the duty to bargain in good faith is the obligation to actually meet and to commit time to the process (Carter et al., at p. 301). As explained by Adams:

The failure to meet at all is, of course, a breach of the duty. A refusal to meet unless certain procedural preconditions are met is also a breach of the duty... A failure to make the commitment of time and preparation required to attempt to conclude an agreement is a failure to make reasonable efforts. [pp.10-101 and 10-106]

¹⁹⁶ *Confédération des syndicats nationaux c. Québec (Procureur général)*, 2008 QCCS 5076 (CanLII).

101 The parties have a duty to engage in meaningful dialogue and they must be willing to exchange and explain their positions. They must make a reasonable effort to arrive at an acceptable contract (Adams, at p. 10-107; Carrothers, Palmer and Rayner, at p. 453). As Cory J. said in *Royal Oak Mines Inc. v. Canada (Labour Relations Board)*, 1996 CanLII 220 (SCC), [1996] 1 S.C.R. 369:

In the context of the duty to bargain in good faith a commitment is required from each side to honestly strive to find a middle ground between their opposing interests. Both parties must approach the bargaining table with good intentions. [para. 41]

102 Nevertheless, the efforts that must be invested to attain an agreement are not boundless. “[T]he parties may reach a point in the bargaining process where further discussions are no longer fruitful. Once such a point is reached, a breaking off of negotiations or the adoption of a ‘take it or leave it’ position is not likely to be regarded as a failure to bargain in good faith” (Carter et al., at p. 302).

103 The duty to bargain in good faith does not impose on the parties an obligation to conclude a collective agreement, nor does it include a duty to accept any particular contractual provisions (Gagnon, LeBel and Verge, at pp. 499-500). Nor does the duty to bargain in good faith preclude hard bargaining. The parties are free to adopt a “tough position in the hope and expectation of being able to force the other side to agree to one’s terms” (*Canadian Union of Public Employees v. Nova Scotia Labour Relations Board*, 1983 CanLII 162 (SCC), [1983] 2 S.C.R. 311, at p. 341).

....

105 Even though the employer participates in all steps of the bargaining process, if the nature of its proposals and positions is aimed at avoiding the conclusion of a collective agreement or at destroying the collective bargaining relationship, the duty to bargain in good faith will be breached: see *Royal Oak Mines Inc.* To the words of Senator Walsh, that collective bargaining does not go beyond the office door, we would add that, on occasion, courts are nevertheless allowed to look into what is going on in the room, to ensure that parties are bargaining in good faith.

106 In Canada, unlike in the United States, the duty to bargain in good faith applies regardless of the subject matter of collective bargaining. Under Canadian labour law, all conditions of employment attract an obligation to bargain in good faith unless the subject matter is otherwise contrary to the law and could not legally be included in a collective agreement (Adams, at pp. 10-96 and 10-97; J.-P. Villaggi, “La convention collective et l’obligation de négocier de bonne foi: les leçons du droit du travail” (1996), 26 R.D.U.S. 355, at pp. 360-61). However, the refusal to discuss an issue merely on the periphery of the negotiations does not necessarily breach the duty to bargain in good faith (Carter et al., at p. 302).

As for understanding the broad moral concept of good faith, all SRRs and sub-representatives will require some education concerning the application of this principle¹⁹⁷.

¹⁹⁷ *Banque de Montréal c. Kuet leong ng*, 1989 CanLII 30 (C.S.C.) [1989]; *Royal Oak Mines Inc. c. Canada (Conseil des relations du travail)*, [1996] 1 R.C.S. 369, for a definition of good faith; *Queen c. Cognos Inc.*, [1993] 1 R.C.S. 87; In **Kenneth P. Swan** and **Katherine E. Swinton**, eds., *Studies in Labour Law*. Toronto: Butterworths, 1983, 55; *Canadian Union of Public Employees v. Labour Relations Board (N.S.) et al.*, [1983] 2

The operations of the Council must exemplify the standard of integrity that the RCMP expects from its members.

The Council's discussions, exchanges must be informed and factual, and take into account the realities of the work being done by all members.

The process to establish recommendations concerning salary and benefits must reflect the importance, the fairness and the transparency necessary to establish the value and credibility of such deliberations.

It has become apparent during this Inquiry generally that there is a lack of basic understanding of the economics of policing and specifically the costs for the individual services rendered.

Whether this is due to not having a direct interest or to the costs of many police operations have not having been broken down and explained to the members is difficult to say. One of the reasons suggested is that many of the costs, such as supplying vehicles, are managed centrally, so that in many cases the total costs would appear to be unknown.

The consequences of not having the costs of different operations known at all levels of the organization are difficult to assess. However, for the representatives of the RCMP and the SRR program on Council, clearly one of the factors to be considered is the relative economic status of police in society and what compensation is fair.

While the Council does have the presence of specialists, a basic understanding is essential for other members of the Council. As concerns the SRRs and sub-SRRs, in order to be able to communicate effectively the work and the issues dealt with on Council, it will necessitate them receiving basic training in economics to be able to discuss the sometimes complicated issues in a learned manner.

The 1993 Pay Council Report recommended:

118. Interestingly enough, our discussions with representatives of the participants shows clearly that it is the informality of the current process which is at the root of the sense of frustration felt by everyone. We hasten to add that we have not viewed this finding as an avenue to recommending a highly formal process. However, we do emphasize the need to institute a new process which possesses sufficient formality that participants will have confidence in the process while ensuring that the process is not so formal as to inhibit meaningful participation by any one or all of the participants.

SCR 311; *Canadian Union of Public Employees v. Labour Relations Board (N.S.) et al.*, [1983] 2 SCR 311; **Carter, Donald D.**, *The Duty to Bargain in Good Faith: Does it Affect the Content of Bargaining?*, Studies in Labour Law, Butterworth's Toronto 1983; **Carter, Donald D.**, et al. *Labour Law in Canada*, 5th ed. The Hague: Kluwer Law International, 2002.

However, on the contrary, when it comes to their compensation, the rooms where the decisions are made in Ottawa are behind closed doors. This can seem unsettling for members of the RCMP. To have one's compensation determined by civil servants who have little understanding of the complexity, dangers and public scrutiny that police endure renders them skeptical. Police, by the nature of their work, often are weary of explanations and prefer to test them prior to accepting their validity.

It is important therefore that the integrity and the process of making such recommendations be transparent and communicate it.

Communication of the Council's work, from senior ranks of the RCMP and the representatives of the SRR Program, is a fundamental component that has, it is respectfully submitted, not received the priority it requires. The purpose of the Council and its accomplishments require consistent efforts to be communicated to those it is intended to serve. There are multiple factors that have led to this situation. These include that many officers and SRRs, including the sub-representatives, do not have a basic understanding of the economic, legal and the psychological aspects involved in the alternative dispute resolution process which are necessary for them to be able to communicate certain concepts. As well, the narrow mandate of the Council, which deals only with extrinsic rewards such as pay and benefits, is unable to address the intrinsic rewards that the newer generation is seeking from their work.

The final authority of the Treasury Board to determine salary, benefits and allowances for the members of the RCMP is only balanced, to some extent, by the participation of the SRRs and their right to consultation in accordance with the recent judicial decisions discussed above.

Failing the development of greater abilities in seeking mutually agreeable solutions through exchanging views and in finding collaborative and innovative approaches to the areas of conflict, it is difficult to imagine that there will not be more litigation over the details of the rights and obligations of the Treasury Board and the SRR Program. The concept of good faith is extremely fluid and this moral obligation is difficult to circumvent.

The concept of consultation in good faith is difficult to describe since it is always evaluated taking into account the unique facts of any particular context. This moral obligation is a wake-up call to the parties that during consultation that they should be cautious so as not to breach the standard of good faith. It requires knowledge of the law in order to meet the objective standard of good faith that may be applied should the case ever go to court and the behavior of the parties be examined. Should an agreement not be reached, the parties may have recourse to Federal Court in order to assert that the other party failed to consult in good faith, with all that implies in terms of conflict, delays, costs, lost energy and the raise of cynicism. At stake with this alternative are the substantial costs of litigation to both parties, the recognition that they are unable to cooperate and the impression left to the public that the organization is unable to resolve conflicts internally.

3.5 The Research and Support Services Branch of the Council

Several individuals interviewed spoke to the importance of the research and analysis of the Branch in avoiding arguments about the facts.

Given the broader mandate recommended for the Council and the issues that the parties may submit “as collective workplace goals” under the jurisdiction of both the RCMP and Treasury Board, the preparation for meetings should increase.

Exactly how the manager of administration and research came to report to the CHOR is not clear. However, as these functions should not only be carried out in a non-biased independent manner but give the appearance of the same the present reporting is not appropriate.

As concerns the independence of the Council, the location of the Council’s offices should be in a separate location, perhaps another government building or in the Canadian Police College or another similar location.

The human resources presently allocated to the administrative and research functions of the Council would appear to be sufficient at this time.

The Council should, with the participation of Treasury Board Secretariat and the Department of the Chief Human Resources Officer, publish and maintain an updated online version enumerating all salary information, benefits, holidays provisions and leaves of absence, with reference to the source and/or institution responsible for the particular right or obligation. This would be similar to the Agreement between the Treasury Board and the Public Service Alliance of Canada, Group: Operational Services (all employees), Expiry Date: 4 August 2011.

Members have described that, in their view, transparency means making available enough information for members to understand how their interests are being dealt with, the logic behind the reasoning and demonstrating their interests were considered and handled fairly.

The principal activities of the Research and Support Services Branch of the Council are:

- Assisting in the process of preparation of the Council’s recommendations for salaries and benefits
- Undertaking neutral fact finding as a basis for problem-solving
- Undertaking unbiased research of background information for specific issues requiring background material necessary to inform the members of the Council –
- Obtaining timely information concerning police salaries and benefits by maintaining efficient on-going relations with other police organizations across the list of 82 Canadian

police organizations having Departments with more than 50 police in the table First Class Constable Salaries –Officers¹⁹⁸

- Sharing information and maintaining relations with the representatives of the Treasury Board
- Maintaining and providing to the Council relevant current statistics and data on the labour relations environment, based upon mandate letters for research accepted by the Council
- Facilitating and coordinating the setting of meeting agendas based on mandate letters, current research and requests by Council members
- Communicating the work of the Council
- Managing the budget of the Council
- Providing support services for the operations of the Council
- In consultation with Mercer Consulting, operating and maintaining the Total Compensation model
- Ensuring that all reports are shared via mail outs (electronic and hard copy) and through infoweb.

3.6 Participation and Communication of Council Related Information

The Inquiry examined the methods of communication both to and from the Council with respect to the subject matter or issues dealt with by the Council. It found that the SRRs and sub-representatives would require further education and/or training in basic economics, law and knowledge management. This would facilitate and support their capacity to receive and to understand information and would make them capable of disseminating the essence of the work accomplished by the Council.

During this Inquiry, there have been numerous requests for a better method for understanding and communicating the respective rights and obligations of the RCMP, the Treasury Board and the members. A recommendation in this respect is below.

The principles established under the Constitution of the Staff Relations Representatives include:

- 4 C: “Every member will receive equal treatment under the SRR Program, without regards to race, national or ethnic origin, color, religion, age, sex, sexual orientation, marital status, family status, or disability.”

¹⁹⁸ Canada RCMP Pay Council police compensation tables, march 2012, Conseil de la solde de la GRC, tableaux de rémunération des policiers, mars 2012, p. 3, 4 and 5.

- 4 F: “A major function of the SRR Program is to ensure that management decisions, new policy directions and other organizational initiatives benefit from all perspectives and viewpoints, thereby producing the best and most viable policy directions and the most effective organizational decision making.
- 4I: “The SRR Program should be routinely reviewed to ensure that it adapts to the changing needs of the RCMP and its members, and subject to the mutual consent of both SRRs and management, be amended as necessary to meet those needs.

The duties of the SRRs include:

- 13 A i a): ” Providing RCMP members with information on developments nationally, regionally and in the division, including but not limited to national policies, SRR caucus positions, decisions and local developments;
- 13A i c): “Providing advice, guidance and active support to members on the human resources implications and applications of legislation, policies and procedures as they affect them;
- 13 A i e): “Arranging or engaging in facilitation and mediation to resolve issues and disputes between members and management.
- 13 A ii : “Participating in Divisional meetings where discussions will directly affect the terms and conditions of employment of members;
- 13 A iii d): “Subject to RCMP policy, and guidelines established by the SRR caucus, represent members’ interests with the media and with external stakeholders;

The duties of the sub representatives of the SRR Program include:

- 14 A i c): “ Developing and maintaining a working knowledge of legislation, human resource policies and procedures of the particular concern to members ;
- 14 A i d): “Responding to members’ requests for information on legislation, policies and procedures affecting them and where possible provide guidance on the implications and applications.
- 14 A iii: “Acting on behalf , or in the absence of the SRR when requested by a SRR from the Division he/she is tasked with representing; and
- 14 A iv: “In good faith, supporting, advancing and carrying out all official policies, objectives and goals of the SRR Program.¹⁹⁹

David K. Hurst in *Crisis & Renewal, Meeting the Challenges of Organizational Change*, writes that:

It has been suggested that when problem-finding or the definitions of the problems, is an issue for an organization, then our conventional concepts of information processing are inadequate. It is the quality rather than the quantity of information that counts in these situations and information is richest in the small-scale, face to face encounters in the context like the hunters’ campfire circles. It

¹⁹⁹ RCMP Staff Relations Representatives Program Constitution presently in force.

seems that we need the primary group to foster the use of our primary, creative, cognitive processes.²⁰⁰

With its multiple locations, large workforce, two official languages, this is no small matter. The SRRs on the Council also must take the necessary steps to increase the chances that its work is understood. Greater effort must be made to achieve this.

The economics of policing and maintaining or improving compensation are becoming increasingly interrelated. In order for the SRRs on the Council to represent the interests of the membership in such discussions, they will require the organized input of the all of the SRR and of the sub-representatives in this regard.

Among the many elements that must be taken into consideration, an important facet of any discussion concerning any organization rendering services is understanding the organization's financial costs incurred by delivering its services. The Inquiry has found a general lack of appreciation for the costs of many of the transactions or services that police undertake each day, for example, responding to a call, patrolling a given geographic area or undertaking an investigation.

The RCMP has been unable to satisfactorily account for all of its costs. The Auditor General of Canada found that:

The federal government and the Royal Canadian Mounted Police have made unsatisfactory progress on commitments made in response to recommendations in our 2000, 2004, and 2007 reports regarding national police services. The RCMP is still providing national police services to other levels of government and law enforcement organizations without clarifying which services should be provided; how they should be funded; and how provincial, territorial, and municipal partners should be engaged within the national police services governance framework. In the absence of formal agreements, the accountability of the RCMP and other partners for the delivery of these services has not been clearly established, nor has how they are to be sustained over the long term. The RCMP has not determined the detailed transactional costs of providing each of its national police services. Accurate costing information is essential to efficiently manage services and resources.²⁰¹

The Staff Relations Representative Program (SRRP), Satisfaction and Needs Study, Report of Findings, March 17th to April 6th, 2010: contained the following Conclusions/Recommendations

- Support for the SRRP is very high, within the context of change. A solid preference of a modified Staff Relations Representative System holds true across regions, rank, and tenure, and it

²⁰⁰ Hurst, David K., *Crisis & Renewal, Meeting the Challenges of Organizational Change*, Harvard Business School Press 2002 (1995), ISBN 1-57851-870-9, p. 155

²⁰¹ 2011 June Status Report of the Auditor General of Canada, Chapter 5—National Police Services—Royal Canadian Mounted Police, http://www.oag-bvg.gc.ca/internet/English/parl_oag_201106_05_e_35373.html. [Emphasis added].

speaks to a need for change within the employee representative system. It also indicates that a modified SRRP is in a very good position to meet the needs of the membership, but it is contingent on a successful execution of several elements:

- o A highly effective communication strategy, which will include some elements of education to increase awareness of the SRRP among the membership;
- o Regular feedback and consultation mechanism as an outlet for direct member input;
- o A strategy to address the concerns and expectations of the membership identified in this study, most importantly, independence of management, and authority to negotiate on behalf of members, especially with relation to pay/pay levels/benefits.
- Members strongly prefer the SRRP and have a high level of trust in the SRRP, yet at the same time strongly require changes to meet the issues noted in the MPAO decision within the SRRP program.
- A strengthened, more independent SRRP is clearly preferred to a union or other form of association.²⁰²

The members of the Council have both proactive and reactive roles. They must capture and forward the insights, ideas and innovative thinking of their constituencies.

During the Inquiry, the issue of how often and how much effort was given to tapping the communication of the experience of the representatives' constituencies was raised several times by interviewees. Concern was expressed regarding the need for harnessing the insight from the members.

Tacit knowledge was discussed earlier in this report (in the Mandate under the sub heading "Knowledge") and is defined as knowledge only present and available from the individual as it was discovered from personal experience and thus not available nor accessible to others.

This type of knowledge is likely to disappear with the individual who possesses it unless it is harvested and documented so as to be accessible to others. Emails from the SRRs to the SRRs on the Council can accomplish this rendering of tacit knowledge into express knowledge that can be shared with others.

Many Japanese workplaces place a heavy value on the daily learning (tacit knowledge) of their workforces and capture the insights of the individuals undertaking the work. For the organization to discover and record this information, it must create an environment conducive to sharing and valorizing the process.

Japanese companies, every several weeks or more frequently, depending on the nature of the work, organize informal sessions where they listen and record the employees' observations and insights from their different operations from the bottom up and pass it up to the top of the

²⁰² The Staff Relations Representative Program (SRRP), Satisfaction and Needs Study, Report of Findings, March 17th to April 6th, 2010, Prepared for: Staff Relations Representative Program (SRRP) of The Royal Canadian Mounted Police Prepared by: Pollara Inc, p. 8

organization. The knowledge then becomes express. It provides information for the leadership that was previously unobtainable and it improves the chances of finding and developing innovative ways of doing things.

As well, the process in itself accomplishes several important goals at the same time: it pays respect to what the people doing the work learn, it encourages the workforce to be more observant, it implicitly values their contributions and recognizes the importance of their work through their having been listened to. As well, it makes it more likely that frontline workers will listen to messages coming from the other, “top-down” direction²⁰³.

As Karl Weick and Kathleen M. Sutcliffe point out, when timely and candid information generated by knowledgeable people is available and disseminated, an informed culture can become a learning culture.²⁰⁴

3.7 Opportunities for workplace goals to be brought to Council

The following are means by which workplace goals may be brought to the Council:

1. The determination by the SRRs to pursue collective workplace goals involving the work conditions
 - under the jurisdiction of the Treasury Board
or
 - under the jurisdiction of the RCMP
or
 - under the combined jurisdiction both groups
or
 - upon the request of the Commissioner
or
 - upon the request of the SRR Executive
2. The determination by the management of the RCMP to pursue a workplace goal and prior to implementing it, using the option of discussing within the forum of the Council
3. The Council determines that certain workplace issues require the attention of the management and of the SRRs and wish to exchange views on the matter in the Council.

²⁰³ **Nonaka, Ikujiro & Takeuchi, Hirotaka**, *The Knowledge Creating Company, How Japanese Companies Create Dynamics of Innovation*, Oxford University Press, 1995, ISBN 0-19-509269-4.

²⁰⁴ **Weick, Karl E., & Sutcliffe, Kathleen M.**, *Managing the Unexpected, Resilient Performance in an Age of Uncertainty*, John Wiley & Sons, Inc. 2007, ISBN 978-0-7879-9649-9, p. 135

As explained earlier in this report, the number of instances and stakeholders involved with the RCMP are substantial. As a consequence, the process for incorporating their respective considerations appears at first glance to be complicated. That however is the nature of the challenge to establish a process and forum that are suitable. For further clarification, the stages of the recommended operations of the Council are:

Stage 1: The SRRs determine they wish to pursue a workplace goal that would require changes to the work conditions under the jurisdiction of the RCMP or the Treasury Board. They would then present such matter to the Council for exchange and discussions with the management representatives of the RCMP, the Chair and the Vice-Chair. Also invited to participate would be two representatives of the Treasury Board.

Stage 2: Upon completion of the overall exchanges, a sub-stage would then be scheduled when the goal pursued by the SRRs relates to or involves the jurisdiction of the Treasury Board. In this case, two representatives of the provinces and the territories would be invited by the Chair to participate in these particular exchanges.

Stage 3: As concerns the pursuit of collective workplace goals under the jurisdiction of the RCMP, the SRRs would present their goal to the Council, which includes the Chair, the Vice-Chair and the two representatives of management. This would not include representatives of Treasury Board nor the provinces and territories. After their consultation and the exchange of views, the Council would then prepare a recommendation and submit it to the Commissioner if the parties were in agreement. Failing such agreement, the SRRs alone would submit their goals to the Commissioner.

Stage 4: Once the SRRs have discussed and exchanged views under stage 1 with respect to all workplace goals including those under the jurisdiction of the Treasury Board, and stage 2 with respect to workplace goals under the jurisdiction of the RCMP, there would be a stage 3. During these consultations, if the Council (this would not include representatives of Treasury Board nor the provinces and territories) was able to reach an agreement to compensation recommendations, this would enhance the position of the SRRs. In any case, with or without such agreement, the SRRs would then pursue consultations directly with the Treasury Board's official representatives (Treasury Board Secretariat).

Recommendations re: operations

RECOMMENDATION 20

That the Council provide in the first stage a forum for the exchange of workplace goals, concerning all of the work conditions that would potentially be affected, while the respective positions of the parties are still fluid and malleable.

These exchanges should take place between:

- a. First, the Chair & Vice Chair the representatives of the RCMP, the SRRs and two representatives of the Treasury Board would be invited to exchanges concerning the conditions and workplace goals both under the jurisdiction of the Commissioner of the RCMP and those under the jurisdiction of the Treasury Board.**
- b. Second, the Chair & Vice Chair, the representatives of the RCMP, the SRRs , two representatives of the Treasury Board and two representatives of the Provinces and Territories would be invited to partake in exchanges concerning the workplace goals with respect to those conditions (salary, benefits and allowances) over which Treasury Board has jurisdiction.**
- c. Should the management representatives of the RCMP and the SRRs (without the participation of the Treasury Board representatives or the representatives of the provinces and the territories) be able to reach an agreement for submission to Treasury Board concerning compensation, clearly this would enhance the position of the SRRs. However, in either case, as provided below in paragraph e., with or without agreement, the SRR representatives should consult concerning the submission concerning compensation directly with Treasury Board representatives.**
- d. This would also provide an occasion for the representatives of the Commissioner to discuss and exchange views as regards the SRR goals with respect to salary, benefits and allowances.**

- e. Third the SRRs would consult directly with the Treasury Board about the workplace goals with respect to those conditions (salary, benefits and allowances) over which Treasury Board has jurisdiction.
- f. Fourth the Chair & Vice-Chair, the representatives of the RCMP and the SRRs would consult each other about workplace goals affecting the work conditions under the jurisdiction of the Commissioner of the RCMP. The Council would then prepare recommendations for the Commissioner concerning the matter involved. If the Council cannot reach an agreement on the matter, the SRRs may still submit their workplace goals to the Commissioner.

RECOMMENDATION 21

Rather than have meetings scheduled monthly as in the past, meetings should be scheduled taking into account the matters and workplace goals to be discussed and scheduled sufficiently in advance and for the estimated time required for the matters involved.

RECOMMENDATION 22

That a compilation of the obligations and accountabilities of members be made available and easily accessible. It could be referred to as “Terms and Conditions of Engagement”.

The Council should, with the participation of Treasury Board Secretariat and the RCMP’s Department of the Chief Human Officer, maintain an updated online database enumerating salary, benefits, holidays provisions, leave of absence, with reference to the source and/or institution responsible for the particular right or obligation. See for example the Agreement between the Treasury Board and the Public

**Service Alliance of Canada, Group: Operational Services (all employees),
Expiry Date: 4 August 2011.**

RECOMMENDATION 23

That the Council play a greater proactive role as a consultative body. This should include being more mindful and aware of topical workplace issues and developments, when they are in their initial stages before developing into a crisis.

RECOMMENDATION 24

That members of the Council, direct and indirect participants, senior officers, SRRs, the research and support services require education and training in basic economics, psychology and law so as to be fluent and capable of communicating with experts. This can involve a broad range of workplace issues when they undertake their communication responsibilities. Given the substantial changes to the legal framework surrounding workplace relations and the increasing importance of the economics of policing, it is important that the senior officers of the RCMP and the approximately 45 representatives in the SRR Program have an improved ability to understand and to communicate the workplace issues.

This would include a basic education concerning the legal interpretation of the rights of an association such as the SRR Program to pursue collective workplace goals, what constitutes “consultation” and the concept of good faith.

RECOMMENDATION 25

That the Council research analysts should prepare the appropriate research and reading materials relative to the matters to be discussed and

provide the members of the Council with such materials reasonably in advance of such scheduled meetings.

RECOMMENDATION 26

That the research and support services should make the Council members aware of and receive copies of the decisions of the courts that have legal implications for the work of the Council members, including those interpreting what is consultation in “good faith”.

RECOMMENDATION 27

The Treasury Board is the only Cabinet committee created by Parliament. It should be requested to provide their interpretation of how Cabinet Secrecy impacts upon the rights of the members of the Council to report to their respective constituencies the contents of the workplace goals pursued by them, taking into account the *Canada Evidence Act*²⁰⁵.

It is the understanding of the Inquiry that clearly the representatives of the parties on the Council have the right to inform their constituency of their own workplace goals. However, the contents of the actual consultations with Treasury Board Secretariat by the SRRs would be covered by Cabinet secrecy.

²⁰⁵ *Canada Evidence Act*, RSC 1985, c C-5 , (at paragraph (39. (1))

Combined List of Recommendations

Mandate

RECOMMENDATION 1

That the Council's mandate be modified as follows:

To provide a forum for the exchange of perspectives and suggestions concerning collective workplace goals between SRRs and management that involves work conditions under the jurisdiction of the RCMP and under the jurisdiction of the Treasury Board and their respective representatives. These exchanges and discussions should take place initially when the respective positions are still fluid and may take into consideration the views and reasoning of the other members of the Council. At different stages of such exchanges, the representatives of the Treasury Board and as required representatives of the Provinces and Territories should be included. In this role, the Council would act as a "hub" forum.

RECOMMENDATION 2

That the Council's mandate be modified as follows:

The Council should no longer make recommendations concerning the work conditions (salary, benefits and allowances) under the jurisdiction of the Treasury Board to the RCMP.

It should, however, continue with its Research and Support Branch and the provision of independent data concerning the police universe and comparative police studies.

Once the SRR's representatives have made their workplace goals with respect to the work conditions under the jurisdiction of the Treasury

Board known to the Council, and the parties have had the opportunities to exchange views, the SRRs on the Council along with their executive, would then enter consultations directly with the representatives (Treasury Board Secretariat) of the Treasury Board.

RECOMMENDATION 3

The deliberations and considerations of the Council should be the forum for the exchange, research and deepening of the members' understanding of respective positions but, as importantly, a source of pro-active research and center for innovation for pecuniary and non-pecuniary rewards such as job satisfaction and self-development.

RECOMMENDATION 4

That the Council's mandate include providing a forum for the exchange of views, ideas, and consultation in good faith, with respect to the collective workplace goals of both the representatives of the RCMP and SRR to develop recommendations for the Commissioner of the RCMP.

RECOMMENDATION 5

The deliberations and considerations of the Council should also provide the forum for the exchange, and deepening the member's understanding of respective reasoning but, as importantly, a source of pro-active research and center for innovation for pecuniary and non-pecuniary rewards such as job satisfaction and self-development.

RECOMMENDATION 6

The Council should be more appropriately referred to as the RCMP Relations Council or the RCMP Professional Relations Council.

Structure

RECOMMENDATION 7

That the representatives of the RCMP and the SRRs choose, by mutual consent, a member of the RCMP who is recognized for his or her impartiality, conciliatory skills, insight, and understanding of workplace issues to serve as Vice-Chair and friend of the Council.

It is the Inquiry's recommendation that the present manager of Research and Support Services Branch who already acts independently should be appointed to this role of Vice-Chair and "friend of the Council", at least initially. This would greatly facilitate the transition from the Pay Council to the RCMP Professional Relations Council. Of course, it would require the mutual consent of the representatives of the RCMP management and the SRRs. Obviously, any replacement of the manager would require an evaluation as to whether or not such an individual has the capacity in addition to acting as a manager, to also act as Vice-Chair.

RECOMMENDATION 8

To ensure that the issues of minorities in the workplace receive the appropriate attention, the position of Vice-Chair should also act as a "friend of the Council" to ensure that the voice of minority groups in the organization are heard.

RECOMMENDATION 9

That the Council, through the Chairperson, extends an invitation to the co-chair of the contracting parties within the Contract Management

Committee to provide two representatives to participate in the Council's exchanges concerning salary, benefits and allowances. These exchanges would take place prior to any direct consultations concerning these matters between the SRRs and the representatives of the Treasury Board.

RECOMMENDATION 10

The Vice-Chairperson's role should include proactive monitoring to ensure, through sampling and surveys, that minority groups have their issues addressed by the work of the Council.

Upon reaching agreement with the Chair, the Vice-Chair shall direct the research and the support branch of the Council to this end.

RECOMMENDATION 11

That the RCMP's second representative be chosen from outside of government, including the RCMP, and have a background in economics, strong interpersonal skills and proven problem solving skills in circumstances similar to the work of the Council.

RECOMMENDATION 12

That an invitation be extended to representatives of a constituency within or external to the RCMP when that constituency is affected by the Council's deliberations. Such invitation should be extended at the discretion of the Chairperson of the Council.

RECOMMENDATION 13

That the offices of the Council should include an appropriate meeting room and one caucus (syndicate) room. The decorum should be appropriate for the nature of the work to be undertaken.

RECOMMENDATION 14

To ensure the independence of the work of the Council and to avoid any real or perceived bias on their part, the manager, staff and analysts supporting the work of the Council should not report solely to the management of the RCMP. To ensure transparency, independence and the neutral roles of the manager and the analysts in the Research and Support Branch of the Council, they should report to with respect to administrative matters to both the senior member of the SRR executive and to the Commissioner.

RECOMMENDATION 15

The independence of the work of the Council should be demonstrated not only by the actions of the Council but also by its physical location. We recommend that offices be located off-site from the RCMP buildings and located as close as possible to the library of the Canadian Police College or another suitable library.

RECOMMENDATION 16

The respective terms of appointment of members to the Council should be staggered to avoid the abrupt loss of Council history and experience.

RECOMMENDATION 17

The proven, integrity and abilities of the neutral Chairperson to lead, facilitate, encourage collaborative approach to problem-solving are of extreme importance. The recruitment of such an individual must find appropriate strategies when necessary to seek out such individuals

rather than simply wait for applications. Individuals with these qualities are rare and most often extremely busy.

RECOMMENDATION 18

Given this Inquiry's recommendation for a larger mandate for the Council, the Commissioner and one of the two SRR Executives should be Ex Officio members of the Council.

RECOMMENDATION 19

Each member of the Council should have their existing position description modified to take into account the recommendations of this report. The description should include:

- The identification of the position on the Council
- The qualifications and expertise of the respective members of the Council
- The process for the appointment of the respective members of the Council
- The responsibilities of the respective members of the Council
- The duration of appointments of the members of the Council (staggered if possible so as to provide continuity for the work of the Council)
- The removal of a member of the Council, other than at the expiry of their term, by a decision of the Commissioner in the case of the representatives of the RCMP and by a decision of the SRR Program in the case of the SRRs.
- The estimated workload of the respective members of the Council in terms of days per year
- The compensation in the case of the members of the Council external to the RCMP should be mentioned
- The expenses of the representatives of other constituencies should be borne by their respective organizations

Operations

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Methodology

The methods used to gather the information required and carry out the analysis for the recommendations contained herein included:

- Approximately sixty interviews, with members of the RCMP, mostly chosen at random, who served in various divisions, within all ranks and working in a cross section of different duties carried on by the RCMP. This included individuals who have been members of the Pay Council or worked with the Pay Council. These interviews ranged in duration from one hour to one and one half hours. They involved a series of structured questions as well as the opportunity for interviewees to express comments generally;
- Attendance at the Economic of Policing conference held by The Canadian Police College in June 2012, Ottawa, Ontario;
- Meetings with officials from the Treasury Board Secretariat;
- Observer status at the SRR conference in May 2012 in Kelowna, British Columbia;
- A review of the relevant legislation;
- A review of the pertinent case law and doctrine;
- Communications with the co-chair representing the provinces and territories under the Contract Management Committee;
- Review of documentation and correspondence with the Pay Council;
- Review of reports regarding the RCMP and police culture;
- Research with respect to literature on alternative dispute resolution process design;
- Review of literature with respect to organizational change.

A. Edward Aust

A. Edward Aust provides legal and consulting services with respect to workplace issues, including leadership and organizational culture. He is legal counsel to the law firm Aust Légal inc. and a member of the Bar of Québec.

He has worked with the RCMP under the leadership of the four of the past six Commissioners.

In 1993 and 1995, he led independent inquiries into the establishment of a compensation process for the Royal Canadian Mounted Police and authored the report recommending the formation of the RCMP Pay Council.

From 1998 to 2000, he was Senior Advisor to the Executive Committee and a civilian member of the Royal Canadian Mounted Police, reporting to the Commissioner. From 2000 until 2011, he lectured in different RCMP programs with respect to organizational culture and leadership.

He has lead other inquiries, including a report for Transport Canada concerning the economic impact of the employment relations in the Canadian ports of Vancouver, Toronto and Montreal and their competitive position with respect to American ports in 1996; in 1995, he acted as lead counsel to the special committee of inquiry for the Board of Governors of Concordia University with respect to the work of the senior officer; in 1978, he was appointed vice-chairman of the national joint Grain Handling Industry–Labour Canada inquiry into the safety of grain handling operations in Canada.

Mr. Aust previously practiced law in the Montreal office of Stikeman Elliott from 1977 to 1997, where he was a partner, a member of its Executive Committee and Chair of the Employment and Labour Law Group. He has represented individuals, employers and unions before administrative tribunals and all levels of the court system. He holds a degree in Political Science from Sir George Williams University and is a graduate of the McGill law School.

Mr. Aust is the author or co-author of several publications in English, French and Chinese, including *The Employment Contract* in 1988; he is editor-in-chief and co-author of *The Executive Employment Law*, a loose-leaf service which has been continuously published by Lexis Nexis since 1993; he is co-author of *The Executive Employment Contract*, published by Lexis Nexis in 2012.

He has been retained as a consultant or as a lecturer by major organizations or universities in Canada, the United States, China, Russia, Japan, Mexico, Switzerland, Tunisia and Jamaica.